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AUTHOR	Karlesky, Joseph J.
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ABSTRACT

Administrators were interviewed at Franklin and Marshall College, a small private liberal arts college in Pennsylvania, to learn the impact of federal regulation on the institution. These issues were discussed: (1) what federal regulations affect the interviewee's responsibilities and which are of greatest concern: (2) how the interviewee assesses the costs and benefits of the regulations: (3) ways in which the tone and operation of the offices have changed: (4) what files or position papers might aid in analyzing the changes: (5) how regulations have shaped the college as an institution: and (6) how the interviewee assesses the administration of the regulations and their general consequences. A discussion of the survey results includes the following issues and elements: financial and time costs: regulatory costs and the institution as an employer: occupational safety: physical plant: legal costs; the Employee Retirement Income Security Act: the college as a nonprofit institution: Internal Revenue Service reports and rules: nondiscrimination regulations: the Higher Education General Information Survey: sex discrimination and Title IX of the Education Amendments of 1972: equal employment: the Buckley Amendment on confidentiality of student records: certifications of student enrollment status for various government purposes; enrollment of veterans: student aid programs: and affirmative action. Regulations and the college's future are discussed. (MSE)

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FEDERAL REGULATIONS AT FRANKLIN AND MARSHALL COLLEGE

by

Joseph J. Karlesky

for

The Sloan Commission on Government and Higher Education

October, 1977

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FOREWORD

The intersection between government regulations and higher education is now an issue of critical concern to colleges and universities. Few professional meetings of higher education officials escape at least some discussion and debate of the topic. Relationships between governmental bodies and higher education institutions have become so pervasive that delimitation of the issue enhances the possibility of comprehensible analysis. Through student aid programs and an institutional assistance grant, state decisions clearly affect the institution. Budget battles in the state legislature have consequences for the College. Moreover, the attempt to draw up a state master plan for higher education may help to shape the institution. However, except for occasional references to state policy, this analysis is limited to federal regulations.

President Keith Spalding asked me to conduct this self-study of federal regulations for the Sloan Commission on Government and Higher Education. He granted me full accessibility to College files and commented on my preliminary findings. His strong support and keen interest have been important ingredients in the evolution of this study. John F. Clough, Vice President for Administration and Richard B. Hoffman, Director of Institutional Planning and Research, greeted my frequent requests for information and data with patience, kindness, and good humor. I trampled on their time more than I had a right to expect. William A. Marshall, Chairman of the Department of Athletics and Recreation and Controller James Wetzel provided important information on their respective responsibilities. I am grateful to Richard F. Schier, Professor of Government, for granting permission to include in this report his analysis of the proposal to raise the mandatory retirement age.

Since questionnaires and surveys might have been perceived as contributing to the problem rather than its solution, personal interviews with a variety of College officials were the principal source of information. The following individuals generously offered their time and judgments: Clayton C. Blevins, Director of Construction and Landscaping; Charles C. Colton, Director of Financial Aid; Bradley R. Dewey, Associate Dean for Academic Affairs; Bruce G. Holran, Director of Public Relations; Nancy Honaman, Registrar; Paul R. Linfield, Vice President for Finance; Ronald D. Potier, Director of Admissions, John A. Synodinos, Vice President for Development; John R. Smith, Director of Operations; Richard P. Traina, Dean of the College; and John H. Vanderzell, Professor of Government and former Dean of the College.

While the context of the interviews differed according to individual responsibilities, the following issues guided the discussions: What federal regulations affect your responsibilities and which are of greatest concern? How do you assess the costs and benefits of these regulations? In what way has the tone and operation of your office changed because of federal rules? What files and/or position papers might aid in analyzing these changes? How have federal regulations shaped the College as an institution? How do you evaluate the administration of federal rules and their general consequences? A written transcript of the discussion was sent to individual officers. They kindly revised or expanded the statements and corrected my errors in interpretation. They will see their judgments in what follows, but I must be accountable for any of their denials of responsibility.

Joseph J. Karlesky

PART ONE

A CAMPUS PROFILE

Franklin and Marshall is a small liberal arts college located in Lancaster, Pennsylvania, approximately seventy miles west of Philadelphia. The city of Lancaster, with a population of 60,000, is the center of the Lancaster County metropolitan area which contains a population of more than 300,000 people. Lancaster City is a major agricultural and industrial center lying in the heart of some of the richest agricultural land in the United States.

Franklin and Marshall College bears the names of two of the most illustrious individuals in that small group of uncommonly talented men who shaped the Republic in its early years. Chartered in 1787, Franklin College was named for Benjamin Franklin, whose original gift of two hundred pounds continues as part of the College's $12.5 million endowment. Other community leaders and members of the Lutheran and German Reformed Churches joined Franklin in establishing the College. While the institution is now independent and non-sectarian, the College retains an historical relationship to the United Church of Christ. Marshall College, named for Chief Justice John Marshall, was established at Mercersburg in 1835. During the almost two decades before merger with Franklin College, it was one of the first American institutions of higher learning to fuse the new philosophical idealism of Germany with the humanitarian enlightenment of America. In 1853, Franklin and Marshall Colleges merged in Lancaster under the leadership of a board of trustees chaired by James Buchanan, who four years later was inaugurated the fifteenth president of the United States.

Franklin and Marshall College awards the bachelor of arts degree in twenty-seven major programs. An all male institution until 1969, the College enrolls approximately 2,000 students of whom thirty-six per cent are now women. Comprehensive tuition is $3435 per year, and total yearly expenses average $5450. Forty-six per cent of the student body receives some form of public or private financial aid which in 1975-76 totaled $2.9 million. Admission is highly selective, with more than 3200 applications for about 580 places in the entering freshman class. The high quality of students is indicated by the fact that 90 per cent of entering freshmen are in the top two fifths of their graduating high school classes and 62% are in the top fifth. Students come from thirty-four states and sixteen foreign nations, but most are from Pennsylvania (33%), New Jersey (22%), New York (21%), New England (9%), and Maryland (8%). A large proportion of students indicate a strong interest in medicine, law, or business, and more than half of graduating seniors go on to graduate and professional schools.

With an annual operating budget of $12.2 million, the College employs a staff of 348 people. Of the 126 full-time faculty members, 82 per cent hold the Ph.D. and 59% are tenured. A recent study by the Deans' Office showed that current members of the faculty had, since 1960, authored thirty-two books, edited thirteen, and contributed to fifty-six others. During the same period, faculty members wrote sixteen monographs and over four hundred and seventy-five scholarly articles (Campus Guide, Franklin and Marshall College and internal institutional data).

The Reflection of National Trends at Franklin and Marshall

Over the last two decades, the general forces shaping higher education nationally have, not surprisingly, touched Franklin and Marshall as well. In the post-sputnik period of expansion, several trends combined to produce unparalleled growth in American higher education. Large increases in federal funds for research, burgeoning numbers of students, the heightened importance attached to a college education, increases in private giving, and the willingness of state legislatures to expand public institutions all combined to create an atmosphere of growth and optimism.

By almost every indicator, Franklin and Marshall clearly shared in this growth. In 1960-61, the College enrolled 1350 students, while this number increased to almost 2000 by 1970-71 (Figure 1). Over the same period the number of faculty increased from 90 to 150, and faculty salaries increased in real terms (Figure 2). Educational plant funds rose from $8.5 million to $22.9 million over the decade (Annual Report of the Treasurer). Library resources (books, periodicals, and microforms) increased from less than 300,000 to almost 475,000 in the same ten-year period (Figure 3). Such measures suggest the kind of expansion which characterized the College during the decade.

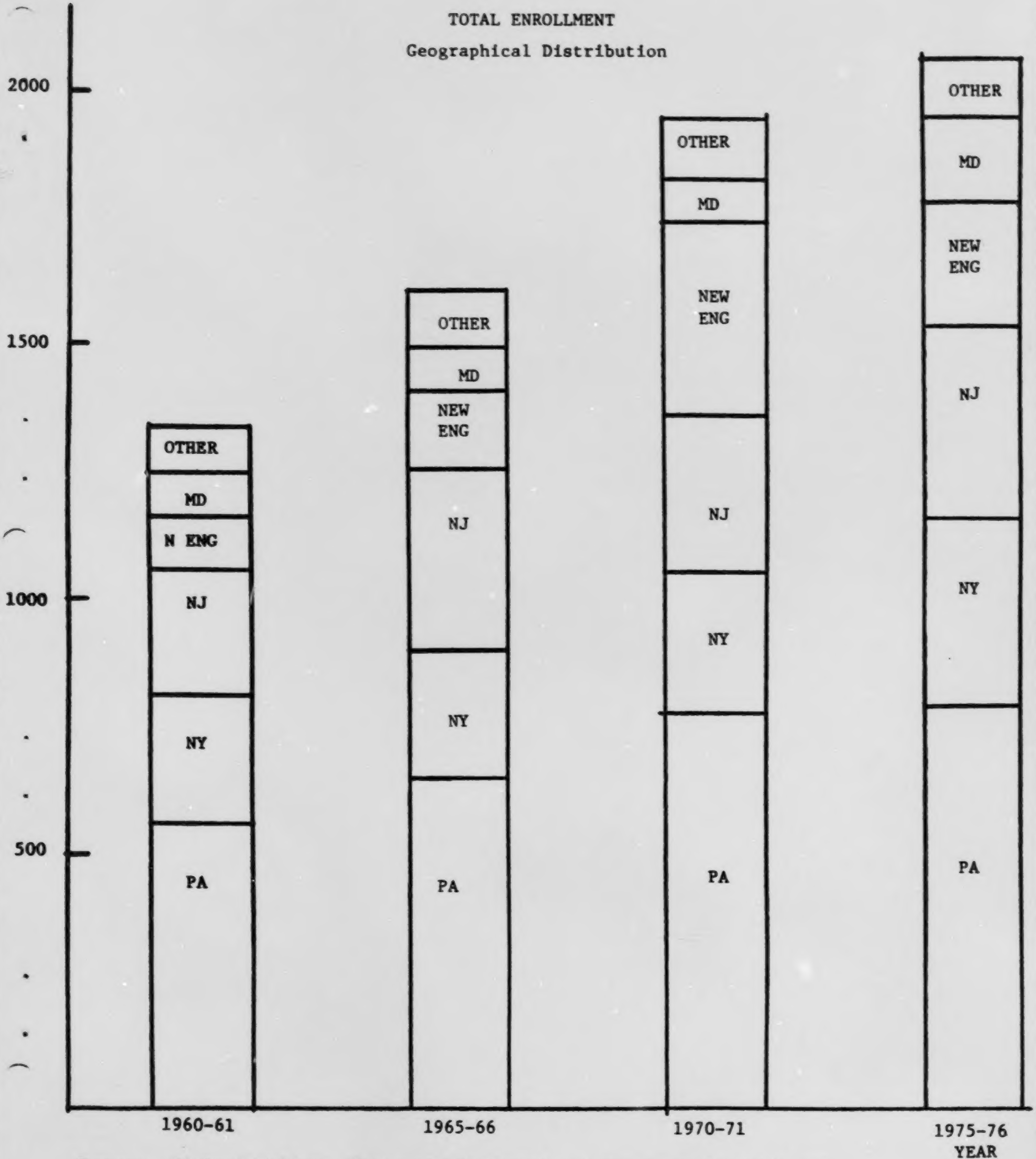
Beginning in the late 1960's and early 1970's, however, a variety of factors combined to slow substantially the unprecedented growth in American higher education. Inflation, an uncertain economy, student unrest, constrained state and federal budgets, a decrease in the growth rate of the student pool, and reduced public confidence in colleges and universities combined in synergistic fashion to change completely the context of decision-making in and about higher education. The precise contribution of each of these factors remains a matter of debate.

Different types of institutions have obviously been affected in different ways. For example, the leveling off of federal funds for research, the rapid decrease in fellowship support, declining numbers of graduate students in some fields, and the increasing costs of instrumentation have clearly made the mission of research universities much more difficult. Tighter state budgets have guaranteed more intense scrutiny of operations in public institutions. The combination of inflation and recession has complicated and hindered for liberal arts colleges the fund-raising activities on which they so strongly depend. The heterogeneity of American higher education has guaranteed such differential consequences, but no institution has been untouched by the changed context resulting from the slow down in growth. Cost-cutting, consolidation of services, elimination of positions, and depletion of resources have become commonplace. More intense intra-institutional competition for limited funds is among the consequences of the heightened budgetary awareness.

Figure 1

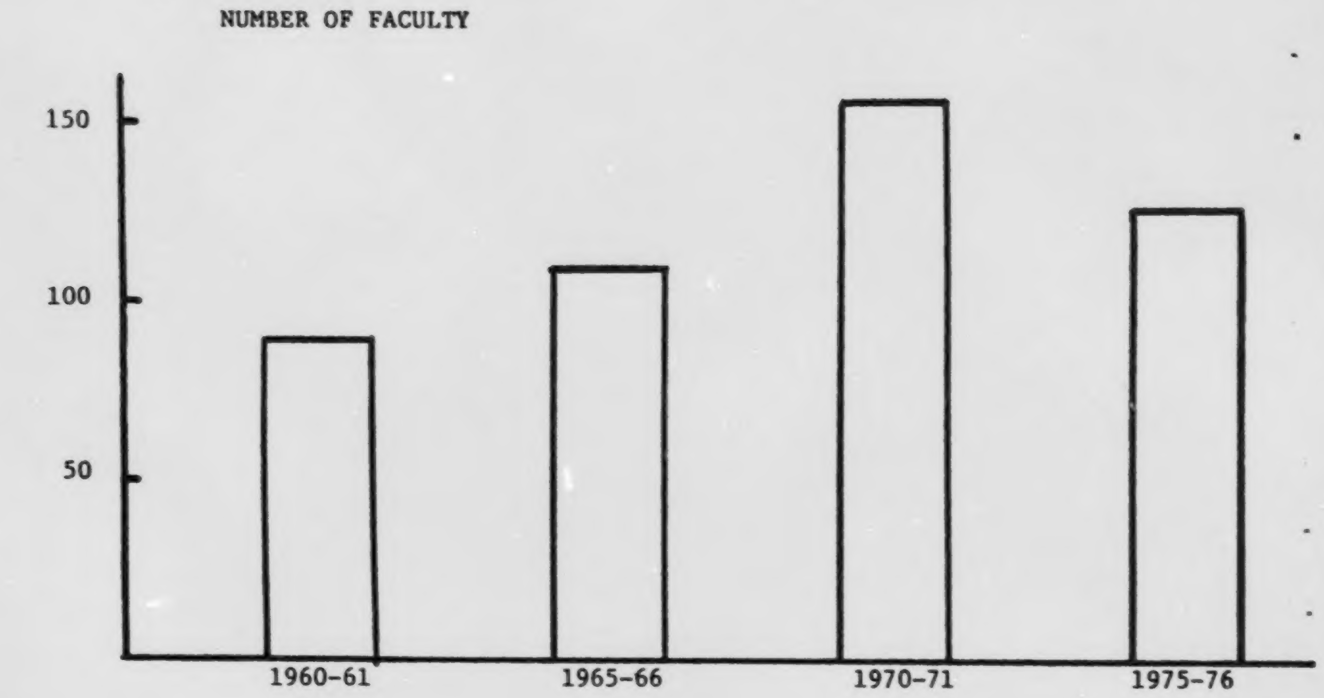
TOTAL ENROLLMENT

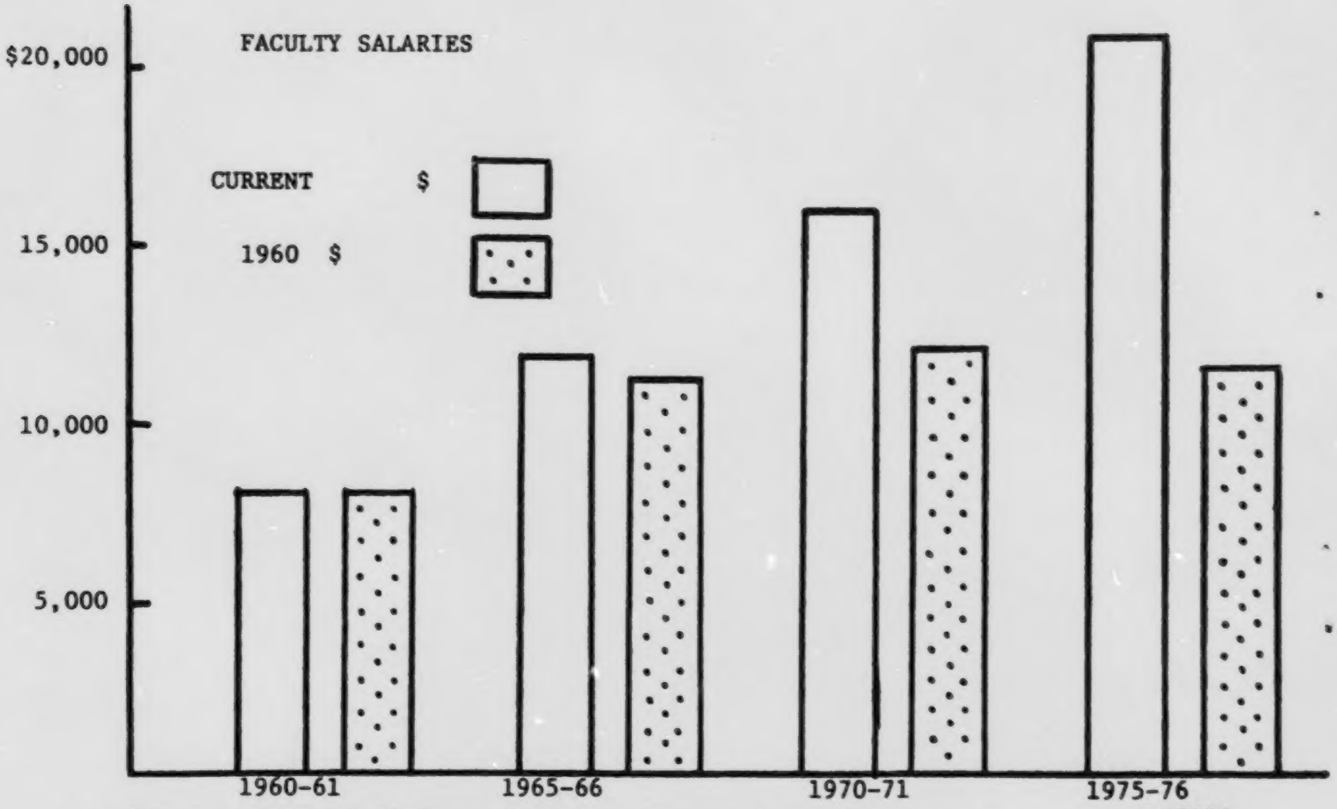
Geographical Distribution



Source: Richard Hoffman, "Measures of Growth and Change at Franklin and Marshall College, 1960-1976."

Figure 2

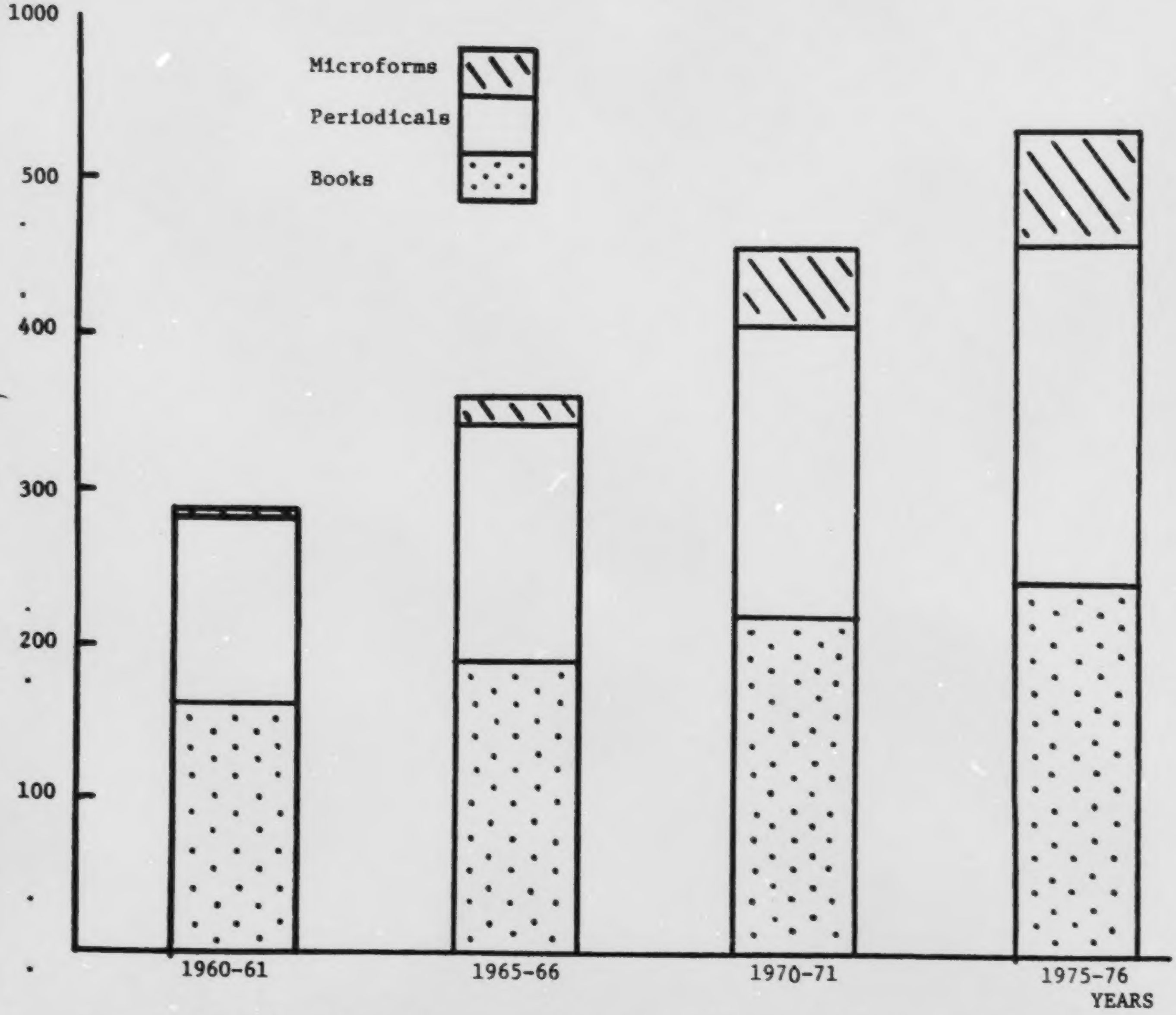




Source: Richard Hoffman, Measures of Growth and Change at Franklin and Marshall College, 1960-1976.

Figure 3

LIBRARY RESOURCES



Source: Richard Hoffman, "Measures of Growth and Change at Franklin and Marshall College, 1960-1976". A Report to the Board of Trustees, October, 1976.
(This should also appear on figures 1 and 2)

Just as Franklin and Marshall shared in the national growth trends of the 1960's, events at the College have to some degree reflected the new context of decision-making in American higher education during the 1970's. The battle to insure that costs do not outrun revenues has become a continuing one. The operation of no department of office in the College is immune to fiscal constraints. Such budgetary awareness is a consequence of the severe financial difficulty the institution confronted in the late 1960's and early 1970's.

Beginning in 1967-68, the College incurred operating deficits which by 1969-70 reached $423,000 or 5% of the $8.3 million budget in that year. Citing such deficits, Treasurer Paul Linfield reported that

> The Board of Trustees is not unmindful of the critical financial condition of the College, and has issued instructions that the budget must be brought into balance.... The College has instituted new planning techniques on an urgent basis to assure optimal allocations of resources, has redoubled efforts in development of gift income sources, has taken steps to yield greater returns from its limited endowment, and continues austerity in setting expenditure budgets.
>
> The financial condition of institutions of private higher education is perilous. Franklin and Marshall College is taking aggressive action to control its costs and to restructure its sources of revenue. (Report of the Treasurer, 1970-71).

Among the aggressive actions taken by the College were a temporary invasion of funds functioning as endowment, a halt to wage and salary increases throughout the institution for a twelve-month period, and reductions in administrative, staff, and faculty positions. Because of these and other cost-cutting devices, the pattern of deficits was reversed and the 1972-73 operating budget was balanced (Report of the Treasurer, 1971-72). In fact, by 1975-76, Treasurer Linfield reported (Report of the Treasurer, 1975-76) that the institution "operated within a balanced budget, achieved a reasonable margin of revenue over expenditures, and continued to be in a sound financial condition."

Understandably, the budget balancing process did not proceed without pain. However, while Franklin and Marshall recognized and acted on the problem earlier than most institutions, the College was obviously not unique in the experience. The great expansion in American higher education had ended by the early 1970's, and a "steady state" environment--and even some contraction--succeeded the patterns of growth. And, as the budget balancing experience indicates, Franklin and Marshall has not been immune to these national trends. Figure 2 above shows, for example, that the number of faculty positions at the College has decreased from 150 in 1970-71 to 129 in 1975-76, and faculty salaries have not kept pace with inflation.

Nevertheless, other indicators show a continuing vigor in the life of the institution. For example, student enrollment exceeded 2000 by 1975-76 (Figure 1 above). The ratio of applications received to freshmen enrolled has declined slightly from 7:1 to 6:1 between 1970 and 1976, but the number of applications has remained stable at approximately 3250 over the past three years (580 students were admitted in 1976). Despite the spiraling costs of published materials, the number of library books, periodicals, and microforms continued to grow and surpassed one-half million by 1975-76 (Figure 3 above). In the same year, educational plant funds exceeded $25.2 million (Figure 4), of which almost $4.2 million was devoted to construction in progress (Treasurer's Report, 1975-76). At a time when fundamental physical plant changes occur with increasing rarity in higher education, the College has over the past two years completed a substantial building and renovation program. A new College Center has been constructed, four historic buildings have been completely renovated, and two structures have been razed. As all of these indicators suggest, the College continues to show signs of vigor despite the constraints of a leaner budget.

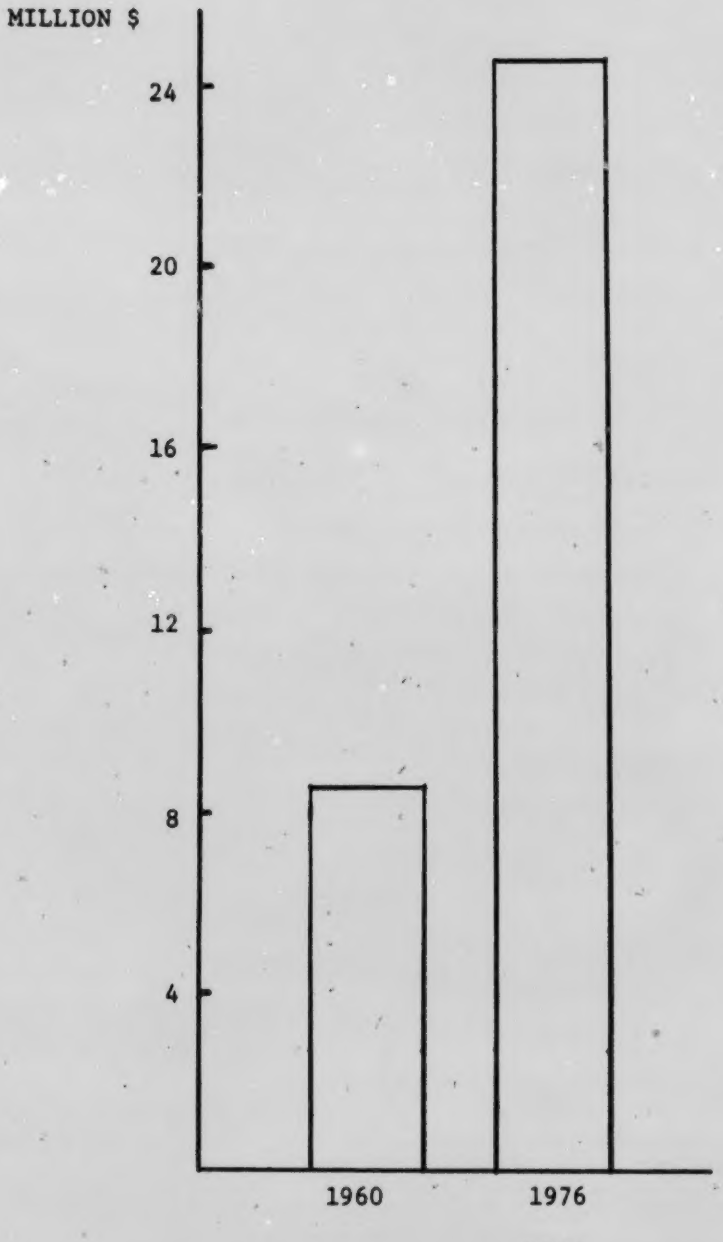
Financial Trends at Franklin and Marshall

Financial trends are among the most significant measures of variation in the life of any institution. While important environmental changes can never be completely quantified, financial data combine the virtues of significance and measurability in the process of assessing institutional change. Patterns in operating budgets, sources of revenue, funds for research, and student financial aid are among such indicators of institutional change.

The educational and general expense budget of the College increased from $2 million in 1960-61 to $9.4 million in 1975-76. In constant 1960 dollars, this represented an increase of 153%, to $5.2 million (Hoffman). The principal sources of revenue (excluding auxiliary enterprises such as the bookshop, dining halls, and dormitories) are tuition and fees, gifts and grants, sponsored research, and endowment income. Table 1 indicates the trends in such revenue sources for selected academic years since 1965-66. While such data must be interpreted with care, the table does suggest several conclusions. First, tuition has

Figure 4

EDUCATIONAL PLANT



Source: Richard Hoffman, "Measures of Growth and Change at Franklin and Marshall College, 1960-1975," A Report for the Board of Trustees, October, 1976.

been the principal source of revenue, even increasing somewhat over the decade. Second, income from endowment has proportionally declined, suggesting the protection of valuable reserves. Third, gifts, grants, and bequests--contributed primarily by private sources, such as alumni, trustees, and foundations--have more than doubled in absolute terms and increased proportionally as well. And finally, sponsored research funds--primarily from federal sources--have declined proportionally over the decade and in absolute amount since 1970-71. The College relies increasingly on tuition and private gifts and grants, while endowment and sponsored research provide proportionally smaller shares of income.

Table 1

College E&G Revenue Sources, Selected Academic Years

Revenue Source		Comprehensive Tuition and Fees [a]	Endowment Income	Gifts, Grants, and Bequests	Sponsored Research [b]	Other
Year	Total E&G Budget					
1965-66	$4,287,378	$2,892,980 67.5%	$341,708 8.0%	$624,936 14.6%	$252,758 5.9%	$174,996 4.1%
1970-71	$7,457,646	$4,844,401 65%	$583,693 7.8%	$846,590 11.4%	$698,862 9.4%	$484,100 6.5%
1975-76	$9,805,690	$6,748,169 68.8%	$588,170 6.0%	$1,621,680 16.5%	$426,252 4.3%	$421,419 4.3%

Notes: a. includes summer school, evening division, and January term
b. includes indirect costs

Source: Annual Reports of the Treasurer

The data in Table 1 do not mean that the College has become less dependent on funds from governmental sources, for numerous publicly funded student aid programs are "hidden" within the comprehensive tuition and fees category. Figure 5 rather dramatically demonstrates College dependence on such student aid. In particular, government funds have shifted away from research programs and are now increasingly concentrated in various forms of student aid. As the chart indicates, federal research funds--primarily grants to individual faculty members--have declined from $278,000 in 1970-71 to $119,000 in 1975-76. Similarly, federally funded institutional research--including such programs as COSIP, undergraduate research participation grants, scientific equipment grants, and general institutional grants--has dropped from $414,000 to $187,000 over the same period. In constant dollars, these declines are even more precipitous.

At the same time, federal scholarships (BEOG's and SEOG's), loans, and work study funds have more than doubled, from $386,000 in 1970-71 to $853,000 in 1975-76. The chart also shows that state government has not been a major funder of research, but state scholarship and student loan funds (primarily from Pennsylvania but other states of student residence as well) have increased from $506,000 in 1970-71 to $887,000 in 1975-76. While conversion to constant dollars would lessen the dramatic impact of such increases, the shift away from federally funded research to federal and state support of student aid is unmistakable.

Such funding trends have obviously not uniquely occurred at Franklin and Marshall, for the levelling off of federal research funds has been a major conditioner of higher education nationally over the past decade. Research universities have clearly been the most seriously affected by this change in funding, although differential impacts have occurred at individual institutions and even among schools and departments

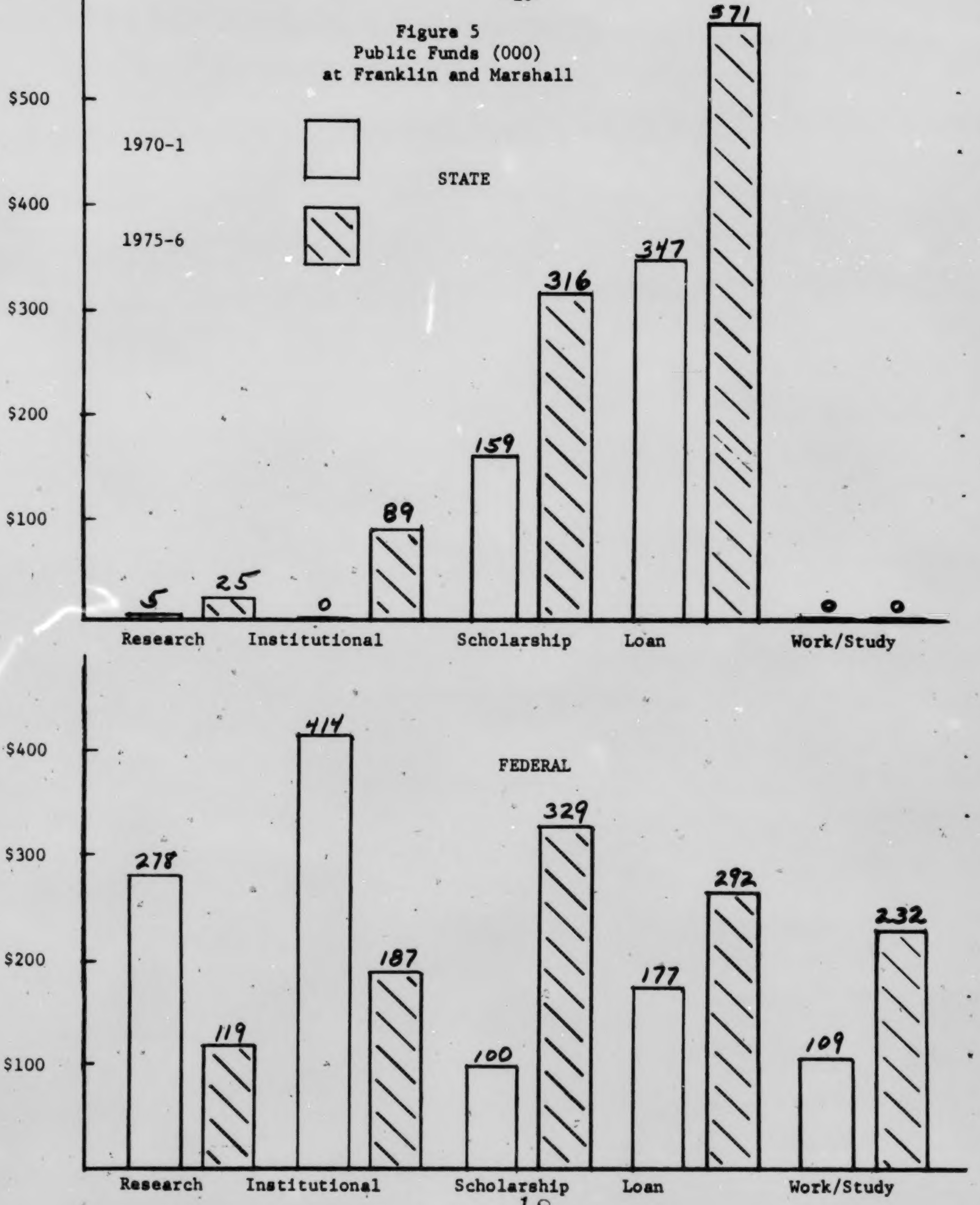


Figure 5
Public Funds (000)
at Franklin and Marshall

Source: Memorandum from Richard Hoffman

within a single university. During the years of expansion, programs to "upgrade" general institutional research capabilities--as distinguished from specific grants for individual research projects--aided many institutions in the attempt to improve their research capabilities. Liberal arts colleges shared in this development. Through initiatives such as NSF's COSIP program, liberal arts colleges were able to improve undergraduate instruction in the sciences, acquire scientific instrumentation, aid faculty development, and, in general, strengthen teaching and research capabilities in the sciences. However, the various forms of general institutional research programs have been among the casualties of the slowdown (a contraction in constant dollars) in federal research funding. General institutional aid programs are now practically non-existent, and even grants for individual research projects are much more difficult to obtain. The data in Figure 5 demonstrate the reflection of these national developments at Franklin and Marshall.

A variety of statistics indicate the increased importance of student aid programs in the College's revenue budget. Total student aid (including College scholarship and other support funds) more than tripled from $917,000 to almost $2.9 million between 1966-67 and 1975-76. The proportion of the student body on some form of aid increased from 35% to 46% over the decade. Perhaps most significantly, as a proportion of total tuition revenue, student aid rose from 29% to 43% over the same period. As such data suggest, practically every form of such aid has increased substantially over the past five years: between 1971-72 and 1976-77, College Work Study funds have increased from $161,000 to $241,405; the NDSL program, from $193,000 to $294,000; the SEOG program, from

$89,000 to $127,000 over the same period. BEOG funds, non-existent in 1971-72, amount to more than $161,000 in 1976-77. State loans and scholarships have also increased substantially. For example, PHEAA (Pennsylvania) scholarship money rose from $104,000 in 1966-67 to more than $271,000 in 1975-76. (Data provided by Financial Aid Director Charles Colton.) The absence of such student support programs would clearly make the mission of the College much more difficult, but their presence allows the kind of public "leverage" which undergirds the debate over governmental regulations and fuels the volatility of the issue.

PART TWO

FEDERAL REGULATIONS: BEGINNING AT SQUARE ONE

The debate over federal regulations is perhaps the most controversial issue vibrating through the complex of relationships between government and higher education. No edition of the Chronicle of Higher Education escapes at least some discussion of the issue, and debate over regulations occasionally crackles even through the national news media. The controversy takes a variety of shapes and forms, depending on which of a series of disparate questions is at issue. Should medical schools be required to accept students who began their training in foreign institutions? Should colleges be required to provide sign interpreters for the hearing impaired, even though the cost of such action would exceed the handicapped student's tuition? Should universities be required to repay funds which public auditors deem to have been illegally spent? Should colleges and universities be required to execute affirmative action programs, even at the risk of altering traditional processes of decision-making on personnel? Should higher education institutions be required to install ramps, lifts, and elevators in buildings to make academic programs more accessible to handicapped students? That such questions are now commonplace should not be surprising, for the emergence of higher education as a major social institution has paralleled the growth of federal intervention in practically all sectors of society. A collision (or, more accurately, a series of collisons) between government and higher education was perhaps guaranteed by the growth patterns in each.

The absence of agreement on just what constitutes a "regulation" has not enhanced the quality of the debate. The view that "regulations" consist of governmental actions having unpleasant or detrimental consequences for higher education may have the virtue of comprehensiveness, but, by including everything, it says nothing. Few institutions in this society can escape the consequences of governmental activity. Given the scope, size, and importance of higher education institutions, it is simply unreasonable to expect colleges and universities to be immune to the effects of public policy decisions. Debate over regulations is hopelessly muddled by the failure to discriminate among governmental programs affecting higher education. Without making the kinds of distinctions that would make Thomas Acquinas proud, credibility demands some attempts to distinguish among the variety of public policies having consequences for higher education.

Public Support and Public Purposes

Definition of issues must precede any serious analysis of the problem, and examination of the relationship between public support and public purpose indicates the importance of the task. One consequence of the growth of higher education in the decade following Sputnik has been the heavy dependence of colleges and universities on public funding. The height of the "ivory tower" is in no small measure due to the number of tax dollars flowing into its base. Decisions made in Washington or the state capitals help to shape almost every campus in the country. For example, the very existence of public universities, by definition, literally depends on favorable action by state legislatures. Research universities would do much less research without federal funds. Liberal arts colleges would have fewer students (or at least different kinds of students) without federal and state financial aid programs. Such dependence on public monies, of course, varies among institutions, but few could avoid at least some contraction in the absence of governmental support. Consequently, the adequacy and timeliness of funding programs is a perennial issue in the relationship between government and higher education.

The contours of the debate over the "care and feeding" of academic science provide a useful illustration. Research universities receive up to one-third of their budgets from the federal government in the form of grants and contracts, and fellowships, instrumentation grants, and funds for specific projects heavily undergird graduate teaching and research in the sciences. The federal "presence" in such teaching and research efforts has been nothing short of overwhelming. Reductions in federally funded programs--or the failure to increase them--guarantees protest from bench scientists, graduate deans, and vice presidents for research. The decline in graduate fellowships, the increased difficulty in obtaining grants, and shifts in the kinds of projects funded have all been issues of heated discussion.

However, such matters cannot be properly called a problem of federal "regulations." National policy for academic research has generally rested on the assumption that the "state" is "buying" research for national purposes rather than supporting research institutions as such. Should national purposes change, the assumption holds, federally funded research programs will also change. According to this view, the decline in federal graduate fellowships, for example, is an issue of national purpose rather than an issue of the economic vitality of graduate departments within research institutions. Universities--whose success has been in no small way determined by their instincts for survival--of course do not see the matter in this way. Since changes in federal policy can detrimentally affect university programs, academics are likely to press for interpretations of national purpose (like higher funding levels) more favorable to their own interests.

The debate will go on, but the illustration suggests that not every conflict between government and higher education is an example of intrusive regulation. Complaints from colleges and universities about inadequate funding, the capriciousness of government decisions, and the lack of congruence between academic and governmental budgetary cycles have become commonplace. Such complaints--and conflicting perceptions of national purpose--are inevitable, given the importance of public funds to higher education institutions. But the cause of enlightened debate is not served by throwing every complaint or conflict over national purpose into the hopper of government regulations.

The Cost of Doing Business

The business of educating people requires employees, physical plant, and many of the logistical resources required for the execution of any large task. Faculty members are scholars and teachers, but they are also employees. Classrooms are places of learning, but they are also housed in buildings which must be safe places of learning. In short, higher education institutions do not exist in a societal vacuum. Like other institutions, colleges and universities are subject to a variety of rules, demands, and constraints springing from their participation in society at large. Not every such rule, demand, and constraint can be viewed as an intrusive—and indefensible—act of government. The degree to which higher education institutions are "different" from other "businesses" is, hence, a primordial question which must be high on the issue agenda of analysts confronting the jungle of federal regulations.

The importance of this issue is highlighted by an American Council of Education special report on "The Costs of Implementing Federally Mandated Social Programs at Colleges and Universities" (June, 1976). Carol Van Alstyne and Sharon F. Coldren, authors of the report, analyzed six institutions and concluded that "In the 1974-75 academic year, the combined cost of implementing the federally mandated social programs at the six institutions was $9-10 million; the cost to the individual institutions requested between 1 percent and 4 percent of their operating budgets." Furthermore, "the costs of implementing the federally mandated social programs at these six institutions have doubled over the last five years--considerably faster than increases in overall costs of instruction." (p. 14). The federally mandated social programs studied included equal employment opportunity, equal pay, affirmative action, age discrimination, wage and hour standards, unemployment compensation, social security tax increases, health maintenance organizations, retirement benefits, wage and salary controls, occupational safety and health, and environmental protection. (p. iv)

Perhaps the most important conclusion of the analysis is the high cost of social security taxes to higher education institutions. In fact, according to the Study, 53% of the total cost of federally mandated social programs in 1974-75 was attributable to social security taxes alone. While the high cost of social security taxes is an undeniable burden on colleges and universities, social security tax payments may be the "price" of doing business in this society. Short of proposing differential treatment of higher education in social security tax policy, a "bottom line" does not readily emerge by citing such high costs. And, given the current debate over the fiscal soundness of the social security system, proposals for exemption are not likely to be heartily embraced by Washington.

Van Alstyne and Coldren are careful to point out that their analysis "covers those federally mandated social programs that apply to colleges and universities because they are treated as business entitities; it does not extend to those programs directed at educational institutions as such" (p. v). This distinction does raise several crucial and interesting points. Are there any differences among public programs applying to colleges and universities as business entities? Are there, for example, any differences between social security tax policy and OSHA regulations? Are there any differences between unemployment compensation policies and affirmative action requirements? Moreover, are governmental programs which treat colleges and universities as business entities the same as or different from governmental programs or directives which uniquely affect educational institutions as such? Or, as some have phrased the question, what is the difference between General Motors or IBM and higher education institutions? These questions are implicit in any debate over regulations, but no serious analysis can avoid grappling with such issues. Their visibility is likely to ignite conflicting philosophical positions, but such conflicts are the stuff which make up the reasoned debate out of which public policies emerge.

Who Shall Bear the Costs?

No federal regulation is neutral in its effects. If politics is the process through which choices are made among conflicting perceptions of national purpose, with differential consequences for the parties in conflict, then regulation is the quintessential political activity. Regulations may require either a behavior change (to start doing something not done or desist from doing something being done) or an expenditure of resources (time and/or money) to satisfy the demands of a new program (collect this data or install that elevator). Since behavior changes or resource expenditures are obviously not "free," every regulation implies costs which someone (individual or institution) must pay. Safe buildings cost money, and positions for women and minorities in a time of limited resources entail social and institutional costs of their own. The important analytical question is, who shall bear these costs?

To some, federal regulations are tentacles which ensnare university and college operations. To others, federal regulations are lifelines which raise heretofore disadvantaged (by race, sex, age, or handicap) individuals to higher status. To some, federal regulations are a crushing burden on the mission of educating people. To others, federal regulations are an effective counterweight to the crushing burden of unjust and illegitimate policies. In every instance, a federal regulation means that someone must change behavior, someone must spend time, or someone must spend money. Whether behaviors should change--and who should change them--and whether costs should be paid--and who should pay them and how much--are the root issues of every debate over federal regulations.

When viewed as conflicts over costs, federal regulations in higher education become natural targets of criticism in the academic community. In a time of growing student populations and rising budgets, cost conflicts can be submerged. A continuing expansion of resources can cover a multitude of conflicts and sins. However, as growth rates sink, conflicts are likely to surface. Uncertain public confidence, a lagging economy, and a "steady state" environment all provide fertile soil for the perception that federal regulations are unwelcome threats and burdens. As threats to traditional decision-making procedures, and as additional burdens on already hard pressed time and financial budgets, regulations are not invited additions to campus life. Some commentators have drawn the analogy between higher education protests against regulations in the 1970's and business protests against regulations in the 1930's. While the analogy gives pleasure to businessmen and discomfort to academics, in protesting against regulations both groups are essentially trying to lower their costs.

Zealotry, Heterogeneity, and Conflict

The debate over regulations, of course, goes beyond the question of allocating costs. While Congress enacts general laws, bureaucrats write rules which interpret the meaning of law in specific circumstances. Occasionally, bureaucratic zealotry in writing and administering rules outruns Congressional intent. Legislative review of such rules may be a solution, but at the expense of eliminating the political advantages which ambiguous laws provide. In their zealotry--which they of course see as serving the public trust--bureaucrats can be insensitive to university and college time cycles, arrogant in their demands, and oblivious to the ramifications of their orders. In the eyes of higher education officials, bureaucrats can abuse the process of administering rules.

However, in the eyes of bureaucrats, administration of rules and regulations is an essential execution of public purposes. If, as John Roche has written, there are no immaculate conceptions in politics, then regulations are sired by the demands of emerging groups or by abuses of public programs or violations of law. The emergence of the aged, blacks, women, and the handicapped as vocal political groups has created and energized bureaucracies which make rules attempting to enhance the status of such groups. Bureaucrats, too, can be pressured. The illigitimate expenditure of public funds is another driving force behind the creation of new rules. Abuses in the national College Work Study program (football players receiving funds for "checking the 50-yard line" weekly), for example, can only result in tighter rules. While discretion and good judgment needed in dealing with individual problems is allowed by flexible rules, the opportunity for discretion can, in abusive hands, be transformed into license. Rules cannot easily distinguish between "benign" and "malevolent" flexibility. Abuses result in new rules which can only serve to limit discretion.

The administration of regulations is further complicated by the heterogeneity of both regulators and the regulated. The "bureaucracy" is a misnomer. Rather, rules are administered by bureaucracies, each having different perceptions of public purpose, each moved by different pressures, and each characterized by different degrees of zealotry. A single higher education institution may be subject to conflicting demands from a variety of different bureaucracies, each oblivious to or uncaring about the demands of other regulatory agencies. For institutions caught in the crossfire, ability to respond becomes highly costly or impossible.

The regulator's task is facilitated by the process of homogenization. A rule applying in similar fashion to all higher education institutions is easier to administer--and perceived to be more defensible--than different rules for different types of institutions. However, the higher education "community" is, too, a misnomer. Research universities (both public and private), liberal arts colleges, agricultural and technical schools, state universities, community colleges, and proprietary schools are characterized at least as much by their differences as by their similarities. Indeed, some would argue, a more appropriate designation would be higher education communities.

OSHA regulations are likely to be of greater consequence in the engineering school of a research university than in the physics department of a community college. Rules on veterans' programs are likely to be of greater consequence in proprietary schools than in liberal arts colleges. The occurrence of abuses in student aid programs will likely depend on the disparate degrees of honesty and good management found among all institutions. Despite such differences, bureaucratic decisions on rules in one institution or type of institution are likely to reverberate throughout the rest of the "community." Bureaucrats seek to muffle the differences among institutions, while academics seek to highlight their "uniqueness." Viewed from the perspective of each, such conflicting goals among bureaucrats and academics are perhaps inevitable. Nonetheless, the heterogeneity of both the regulators and the regulated exacerbates the already natural conflict between the two.

PART THREE

FEDERAL REGULATIONS AT FRANKLIN AND MARSHALL

This analysis of federal regulations at Franklin and Marshall begins with several assumptions. First, the size or adequacy of federal funds for research or student aid is not a matter of "regulation." While expectations and demands always outrun the availability of funds, the lack of congruence between the perceived need for programs and available monies is not a "regulatory" problem. However, the terms and conditions under which money can be spent and judgments can be made (the filing of reports, the documentation of decisions, and the certifications of action) are assumed to be legitimate objects of analysis in this review of regulations.

Second, the institutional costs of employing people (such as social security taxes) are generally not the product of regulations. The rules of social security taxation, for example, are clear and undebatable, unhindered by any conflicts in interpretation. Mandated action in this area is the price of doing business in this society. However, the payment of such costs raises an issue that is crucial to any analysis of regulations. Van Alstyne and Coldren, in their review of federally mandated social programs, succinctly make the point: "Because a large part of the mandated costs are related to employment, and because academic institutions are more labor-intensive than are most manufacturing and many service enterprises, the cost impact of the programs may be greater on them than on many profit-oriented industrial firms. In addition, colleges and universities have less flexibility in raising prices and reducing other expenditures to generate funds to cover the mandated costs, all of which must be met out of current institutional budgets." (p. V). The College is a non-profit institution whose labor intensity makes it particularly susceptible to inflation and which can pass costs on to "consumers" only with difficulty. Consequently, any regulations (particularly those which are "interpretable," such as OSHA requirements or rules on program accessibility for the handicapped) entailing time and financial costs carry serious implications for the fiscal life of the College. Such costs may range from hundreds of thousands of dollars (to make required changes in physical plant) to the time expenditure of three staff hours (to fill out some required survey or form). Given the non-profit status of the institution, such costs (again, especially those entailed by ambiguous mandates) are considered legitimate objects for study in this review of federal regulations.

Finally, this analysis assumes that any regulation (apart from financial considerations) which alters--or threatens to alter--the educational mission of the College must be afforded the most intense scrutiny. Among the fundamental assumptions underlying liberal arts colleges are that autonomous, institutional decisions help to define a "good education" and that decisions based on merit help to insure high quality. Of course, the components of a "good education" and "high quality" are continuing matters of debate. However, the process of ensuring both is a delicate one, and external pressures can have severe consequences for the vitality of that process. Liberal arts colleges are fragile places, and the work they do and the purposes they serve are not easily measurable. However, the intangibility of that work and those purposes makes them no less important.

Reasonable men (persons) will differ over the best way to analyze the effects of federal regulations. The lack of agreement on prior assumptions and the difficulty of calculating costs are primarily responsible for the failure of a paradigmatic model to emerge. A variety of conceptual schemes have surfaced from the groping attempts to deal with the issue, and this analysis is one of those groping attempts.

This study will attempt to address three distinct--though related--issues central to any review of federal regulations at Franklin and Marshall. First, what costs must the institution bear because of such regulations? Second, in what way do federal rules affect the educational mission of the College? And finally, to what degree do pending regulations or possible extensions of current regulations threaten the College in the future? Other questions might be asked, or the same questions might be asked differently, but these three issues will serve as the ordering scheme for this analysis.

I. Financial and Time Costs of Regulation

One product of federal regulations is the cost (in dollars allocated and time spent) of the behavior changes which such rules require. The reality of such costs is not in question, although their magnitude cannot be easily determined. Sophisticated cost models generally rest on a string of arguable assumptions which may or may not be acceptable to neutral observers. Nonetheless, short of unreachable certainty, "guesstimates" based on posited assumptions are the only alternatives. Federal regulations have unquestionably increased costs at Franklin and Marshall, but the magnitude of those costs is not clear. No "federal regulations" line item appears in the budget, but the costs of regulations--hidden within other line items--are strewn throughout the document.

Among the regulatory costs the College must bear are the staff time and energy consumed in supplying government agencies with a variety of mandated information. Filling out reports, surveys, questionnaires, and certification materials has become the bane of higher education officials. The growing number of such documents is one symptom of the complexities--or entanglements--between government and higher education. Reports may serve several functions, of which the two most important are the provision of information and the insurance of public accountability. More accurate and comprehensive information presumably allows the making of wiser decisions, while required reports are one classic technique for assuring and measuring accountability. As the amount of staff time devoted to such reports and questionnaires can testify, information and accountability are not free commodities. Moreoever, such report requirements are accompanied by no guarantees that the submitted information will be interpreted or reported accurately. Nor can it be assumed that accountability requests will have only benign consequences for the institution.

Any discussion of costs must distinguish among the various roles which the College plays as an institution in society. For example, viewed from the disparate perspectives of governmental agencies, Franklin and Marshall plays at least three societal roles. First, the

College is an employer. Second, the College is a non-profit institution. And third, the College is, of course, an institution with an educational mission. Each of these roles is likely to draw different kinds of regulations into the life of the College. While regulations may sometimes affect the College at the intersection of several roles, such distinctions bring some order into what otherwise appears to be a chaotic mass of external demands and pressures.

A. Regulatory Costs and the Institution as Employer

Franklin and Marshall can obviously not perform its educational functions without employing individuals. Secretaries, professors, administrators, janitors, and security officers each contribute in some way to the attainment of educational objectives. The importance of the contributions of each, of course, depends on the perspective of the individual observer. Nonetheless, an educational mission requires disparate support functions performed by a variety of employees. Consequently, the safety of the campus, the rights of employees, and the fiduciary soundness of welfare and pension systems are among the issues subject to regulation by a variety of governmental agencies. Each of these regulations seek to guarantee some "good," but at prices the institution must pay.

1. Occupational Safety and Health and Physical Plant

Regulation costs are partially visible in the budget in only one instance. In 1973 the College established a special account for funds to be spent in meeting OSHA (Occupational Safety and Health Administration) requirements. As Table 2 shows, OSHA costs at the College have increased from $980 in 1973 to $24,057 in 1977.

Table 2

OSHA Costs at Franklin and Marshall, 1973-1977,
Dollar Amounts and as a Percent of E&G Budget

Academic Year Ending	Dollar Amounts	% of E&G Budget
1973	$ 980	0.013
1974	11,983	0.157
1975	18,841	0.227
1976	20,872	0.229
1977	24,057	0.220
Total to date	$76,733	

Source: Institutional Data

Such costs have risen in absolute amounts and, until 1977, as a proportion of the total educational and general expense budget. The proportional amounts are less than one percent, but the money spent is nonetheless real. The expenditure of such funds on OSHA requirements has meant that almost $77,000 could not be spent on something else. Moreover, the dollar amounts in the table are easily identifiable costs, such as funds paid to suppliers and contractors to make the physical plant changes. However, the amounts do not include the staff time necessary to plan and supervise modifications nor the hours spent in monthly meetings of the College Safety Committee. The administrative time devoted to such planning and supervision is not broken out in budgetary line items. The operations director estimates that the institution spends thirty man-days per year "doing this or that" on OSHA regulations, not including planning sessions. One individual, for example, made tours of the campus to see where the physical plant could be improved to meet OSHA specifications.

While the intense concern over OSHA enforcement has dissipated somewhat, review of such rules raises at least one interesting issue. The campus is unquestionably now a safer place. Money has been spent to improve emergency lighting, to increase the number of fire extinguishers, to provide electrical grounding for some old structures, and to make other needed changes. The institution has spent funds to meet the not unreasonable social demand for safety as articulated by OSHA, and such costs to the institution have so far been relatively small. However, the rigidity and specificity with which "safety" is defined can result in spiraling costs which could place an unbearable financial strain on the institution. OSHA regulations, for example, consume 240 pages in the 1972 Federal Register. Moreoever, rules are frequently amended and in a constant state of flux so that attempting to comply can be a "nuisance" at best and a threat to sanity at worst. According to the director of operations, meeting the requirements to the letter might cost one million dollars. The "interpretability" of OSHA regulations guarantees uncertainty over just what constitutes compliance. If the institution must bear the costs of safety, how safe is "safe"? How much is enough?

Beyond OSHA requirements, physical plant at the College is subject to a variety of inspections by state and local agencies. Symptomatic of the potential bureaucratic crossfire in which the institution may occasionally find itself, satisfying one inspection carries no guarantees that others will be satisfied as well. In addition to meeting inspection requirements, the institution must submit several kinds of reports on the utilization and state of physical plant. For example, the College submits to the Commerce Department a quarterly report which presumably aids analysis of national economic and construction trends. While the report consumes approximately one staff day, more time may be required depending on the amount of renovation and capital construction which has occurred on campus. The institution must also periodically submit a "space facility survey" to satisfy federal and state reporting requirements. Because of the substantial physical plant changes on campus in recent years, filling out the space facility survey is likely to consume several months in staff time. The task is not eased by the institutional perception that the "benefits" and uses of the survey are uncertain and ambiguous.

2. Legal Costs

One consequence of the increasingly litigous nature of our society is heightened dependence on lawyers, whose services are obviously not free. Franklin and Marshall has not escaped the litigious atmosphere of society-at-large. One College secretary, who had experienced some work difficulties with her superior, tearfully told an administrative official, "I guess I could go to the NLRB..." She did not go to the NLRB, but her plaint signified an awareness of perceived right and justiciable claims rare until recent years. The proliferation of laws protecting some individual or group "right", the greater public demand for and awareness of such "rights", and the willingness to take legal action to protect those "rights" have all combined to increase the importance of courts and judicial proceedings as arenas of social conflict. Lawyers have been among the chief beneficiaries of the increased likelihood of threatened or actual resort to litigation.

The cost of legal services in the College budget has risen sharply over the last decade. Before 1970, such costs did not exceed $3500. However, legal service costs increased from less than $17,000 in 1972-73 to more than $25,000 in 1975-76. Between 1973 and 1976, the College spent almost $72,000 for legal support and advice. The previous solicitor performed some services at less than their true cost, so comparisons over time must be interpreted with care. Moreover, the figures include services for matters (such as property transfers) unrelated to relationships with government bodies. However, the increase in legal costs signifies the growing importance of lawyers as "buffers" between the College and outside agencies. And, dealing with lawyers requires an immeasurable expenditure of administrative staff time which does not specifically appear in the institutional budget.

Two types of matters have contributed significantly to higher legal costs in recent years. First, College response to unionization proposals on the part of janitorial and building staff employees necessitated legal advice on the complexities of labor law. Second, four complaints (one still pending) against the College on alleged sex discrimination in hiring and promotion policies for faculty and administration required legal counsel and support in dealing with the Equal Employment Opportunity Commission and the Pennsylvania Human Relations Commission. The unionization proposals resulted in higher legal costs than the affirmative action complaints, but both matters signify the kind of price the College must pay for being an employer in this society. This is not to argue that unionization proposals for janitors and building employees raise the same issues present in affirmative action complaints in faculty and administrative personal policies. Indeed, as later discussion will indicate, affirmative action--depending on how the rule is interpreted--may pose a greater threat to the institution than any other government regulation. Nonetheless, the existence of public agencies (such as the NLRB and the EEOC) as "protectors" of employee rights and increased claims to those perceived rights combine to complicate life for the College as an employer. While the College's legal service budget has declined in 1976-77, such fluctuations are in large measure due to the ebb and flow of employee rights claims. Inevitably, the opportunity for enhanced status for employees means higher legal costs for the College as an institution.

3. Employee Retirement Income Security Act

Among the reports required of the College in its role as employer are the documents mandated by the Employee Retirement Income Security Act of 1974 (ERISA). The goal of this act is "to protect the interests of workers and their beneficiaries who depend on benefits from employee pension and welfare plans. The law requires disclosure of plan revisions and financial information and establishes standards of conduct for trustees as administrators of pension and welfare plans" (Martens, p. 24). According to William F. Heller, Assistant General Counsel for TIAA-CREF, the following documents are mandated by ERISA: a summary plan description, a plan description, report of plan amendments, an annual report, an annual report summary, benefits statement for terminating vested employees, an annual registration report, a personal pension benefits statement, and a plan termination report (Masters, pp. 25-26). In attempting to meet ERISA requirements, the College has already compiled a file which is approximately two inches thick. By making recommendations on how best to meet ERISA regulations, TIAA-CREF has been very helpful to the institution. However, the paperwork, reports, and research which must be done to meet the requirements are obvious costs which the College must bear. The College sends to, significantly, "employees" periodic notices informing them of individual rights and institutional obligations under the new regulations. An excerpt from one such notice (Appendix A at the conclusion of this analysis) indicates the kind of information the College must now supply:

> ERISA requires Franklin and Marshall College, the administrator of the Total Disability Insurance Plan to file certain information about the plan with the U.S. Department of Labor. A description of the plan's provisions must be filed with the Department of Labor by May 30, 1976. Franklin and Marshall College must also file an annual report with the Department of Labor by October 15, 1976. The annual report gives detailed financial information about the plan. Franklin and Marshall College is also required to send a summary of the annual financial report to you, at no charge.

To the degree that ERISA regulations attempt to prohibit fraud or lackadaisical management in the administration of employee welfare and pension funds, the goals of such legislation are not in question. Nonetheless, ERISA is a classic illustration of the argument on which this entire analysis rests. That is, laudable goals are not "free" commodities. In the case of ERISA, protection of employee rights means additional costs--in the form of increased staff time and paperwork production--that the institution must absorb in an already strained budget.

B. Regulatory Costs and the College as a Non-Profit Institution

As an educational institution, Franklin and Marshall produces no "product" whose sale provides a "profit". Such non-profit status means that the institution's educational revenues are not subject to taxation. However, the Internal Revenue Service has been vigilant in monitoring non-profit institutions to assure that the public treasury is not diminished by abuses of the tax laws. Moreoever, IRS demands have required some changes in institutional behavior which, at the least, cost staff time. In order to preserve its non-profit, tax-exempt status, the College must match IRS vigilance with a vigilance of its own.

1. Internal Revenue Service Reports and Rules

Internal Revenue Service reports constitute another area in which mandated information requirements necessitate rising expenditures of College staff time. Before 1975-76, filling out College tax forms was a relatively minor task. However, beginning in that year the IRS--in assessing the institution's tax-exempt status--has required increasingly comprehensive data. For example, one individual in the

College business office spent one full week last year in research and data compilation necessary to complete Tax Form 990 (for organizations exempt from income tax). The form requires a variety of information, all of which necessitates substantial staff time in preparation. Among this information is a financial balance sheet as well as reports on the five highest salaries, gifts exceeding $5,000, bonds payable, investments, and the market value of plant facilities.

Other IRS tax rules, depending on how they are interpreted, may result in higher costs for the institution. For example, IRS audited the College last year for the first time. While the agency declared all in order and recommended that the institution's tax exempt status be continued, audits seem to foster new requirements. For instance, if outside individuals were paid for work in the College radio station--rather than relying on student volunteers--then the advertising revenue would be subject to taxation. Moreover, IRS rules strictly regulate "unrelated business income." Such rules, for example, limit the summer use of college facilities by outside groups, for use of facilities must in some way be related to educational affairs. While the College could probably rent more widely than it does, such increased revenue risks losing tax exemption. As another illustration, income from college and alumni association travel tour programs as "unrelated business" has come under increased IRS scrutiny in some institutions and such scrutiny may affect Franklin and Marshall as well. While IRS rules are designed to prevent abuses of tax exempt status, such examples indicate that the College must take extraordinary care in a variety of planning, personnel, and fiscal decisions. An unfavorable audit can result in higher costs and the kind of IRS suspicion incalculable in its consequences.

2. IRS and the Non-Discrimination Clause

The IRS rule that all College literature must contain a non-discrimination statement is a good illustration of the staff time costs of regulation. Moreover, the timing of the rule and the way in which it was promulgated suggest the kind of frustration College official experience in attempting to comply. IRS regulation 75-50 required that the literature of all non-profit organizations contain a statement of non-discriminatory policy. However, the College was given no time to prepare for implementation of the requirement. The IRS never informed institutions on just what the rule required until publication in the Federal Register. One administrative official declared that "These things pop up without anyone having a chance to comment on them." Nobody in IRS apparently consulted with national professional association officials who could then dispense appropriate information to the College. Rather, such rules too often are buried in the Federal Register, meaning that timely and uniform compliance is impossible.

The College became aware of IRS regulation 75-50 "second hand," and the college solicitor judged that the institution had to comply totally with the rule. The regulation was promulated in November, 1975. Since College literature for that year had already been printed, staff time had to be expended literally to hand stamp the required non-discriminatory statement on thousands of pieces of literature the College already had in its possession. Practically all forms of institutional literature used in public information contain some variant of the following statement:

> Franklin and Marshall College admits students of any race, color, sex, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the College. Franklin and Marshall does not discriminate on the basis of race, color, sex, national and ethnic origin in the administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other College-administered programs.

While such a statement simply formalized already existing institutional policy, prior consultation on the logistical implementation of the rule might have presented the unnecessary frustration and annoyance which accompanied the hand stamping of literature in mid-year.

3. Postal Regulation

The omnipresence and inevitability of the U.S. Post Office in the daily life of the College guarantee that postal rule changes will have cost implications for the institution. For example, according to one proposed rule change, institutional qualification for less expensive second class postage required four publications in which the type, design, and physical dimensions of each had to be identical. Since the College does not mail four types of admissions materials, the institution, under the rule, would be forced to mail its materials on the slightly more expensive third class basis.

Such changes in postal rules are fertile soil for a common criticism of bureaucratic decisions. As one College official put it, "State and federal bureaucracies often appear intolerant of the private sector. There is a definite lack of understanding. Regulations are interpreted without consultation in ways that add unnecessarily to our cost and to the administrative complexity of running an institution.

The Post Office will decide one day that catalogs are not eligible for mailing at a preferred rate and we spend six months wondering how the fight will come out. Meanwhile, Franklin and Marshall redesigns its catalogues, partly to avoid the higher cost, only to find the Post Office backing down." Unintentionally, the proposed rule change had benign consequences for the institution. The same College official declared that "It turns out that the exercise was a useful one in that it forced us to rethink our publications program in light of newer marketing approaches." Nonetheless, the episode illustrates that even the rules of familiar bureaucracies like the omnipresent Post Office can have cost implications for the College.

C. Regulatory Costs and the College as an Educational Institution

The College has clearly incurred time and financial costs because of regulations springing from its employer and non-profit roles. However, while the College is an employer and a non-profit institution, its central mission is educating people. And, not surprisingly, this educational role is not immune to regulations entailing financial and time costs. Such regulations range from relatively harmless report requirements to the uncertain demands of affirmative action and sex discrimination rules.

1. Higher Education General Information Survey

Any review of the disparate reports the College must submit to government agencies suggests the fragmented perception of the institution's role in society. Some reports spring from the College's role as employer, and others originate in the institution's non-profit status. Perhaps the best known of the report requests made of institutions performing educational roles is HEW's Higher Education General Information Survey. Most frequently cited by the acronym "HEGIS", the survey is a comprehensive attempt to collect educational data in a variety of categories, such as enrollment, finances, degree programs, etc. At Franklin and Marshall, the questionnaires are sent to the Director of Institutional Research who--after supplying some data--sends the forms on to a variety of administrative officials charged with compiling and reporting requested information.

Approximately one staff day is required to fill out each of the eight forms. While dealing with the forms is not a task of major proportions, HEGIS categories do not always match the institution's own categories for information collection. Consequently, data gathered at the College must be rearranged and transformed to fit HEGIS categories. Moreover, HEGIS questions change from one year to the next, and--though HEGIS has been more sensitive to the problem in recent years--the resulting absence of a predictable pattern of categories simply complicates the task of information collection. As a result, administrative offices must keep statistics in anticipation of changes which may take place.

A final criticism of HEGIS is that a lead time of several years may separate submission of information by institutions and later publication by the federal government. Since higher education administrators tend to rely on current data rather than time series analyses that may be several years old, such a lead time may defeat one of the purposes of collecting information in the first place. 48

2. Title IX and Sex Discrimination

Another kind of report specifically required by federal rules is the institutional self-study mandated by the Title IX regulation implementing education amendments of 1972. Title IX "deals with sex discrimination in recruitment, employment, admission, treatment of students, and with steps required of colleges and universities to be in compliance with the regulation. These regulations apply to all colleges and universities receiving federal financial assistance, including student loan programs "(Martens, p. 5). Since Franklin and Marshall receives federal financial assistance (especially in student aid programs), the College is not exempt from this regulation. The Title IX requirement most intimately touching the College is the mandated compilation of an institutional self-study on sex discrimination. (The self-study statement is included as Appendix B at the conclusion of this analysis). Thirteen pages in length, the document is an example of a "one time report" (which may or may not be requested by federal officials) mandated by regulation. While the requirement does not consume institutional staff time on a continuing basis, some amount of such time was expended in writing the report in the first instance.

A review of Title IX suggests the methodological difficulties inherent in any attempt to assess the true cost of regulations at an institution like Franklin and Marshall. The College became a coeducational institution in 1969--at least six years before the promulgation of Title IX regulations—and women now comprise 36% of total student enrollment. Significantly, the institutional self-study (Appendix B) contains the following statement:

> The rationale for the decision [to become a co-educational institution] was grounded in the widely shared view that an environment in which only men were present was sharply at variance with reality and that the educational program of the College would be improved by the addition of women to the student body, the faculty, the administration and staff of the College. The recommendations of the studies which preceded the Trustees' decision anticipated many of the goals, objectives and the underlying values which were later reflected in both federal and state legislation designed to achieve equality of treatment without regard to sex.

As a result of the 1969 co-educational decision, the College began adjusting to the presence of women on campus long before the debate over Title IX commenced in earnest. For example, the athletics program for women was practically non-existent in the early 1970's. With the increase in the number of women on campus, however, the College attempted to accommodate the growing interest in women's sports. The amount of funds spent on such programs doubled between 1972-73 and 1973-74, and structural modifications and renovations were made in the College's sports facilities to provide for women's sports programs. By 1976-77, seven sports for women have been elevated to varsity status. Moreover, women and men are treated equally in the provision of a variety of sports services, including meal allowances, means of travel, requirements for physicals, and the provision of officials, varsity medical insurance, and trainer services.

Another example of College adjustment to co-education has been an increasing proportion of faculty, administration, and supporting staff positions held by women over the 1969-1976 period (see Appendix B, p. 2). These increases were accomplished despite a general reduction in the number of College personnel as a result of budgetary stringency in the early 1970's. However, the increase in the number of women working on campus, as well as the improvement of women's athletics, suggest at least two issues in the context of reviewing the cost consequences of Title IX for the College.

First, any attempt to disentangle co-education from Title IX as forces motivating the enhanced status of women on campus is strewn with methodological difficulties. As the self-study statement above indicates, the College initiated programs to improve student life for women well before Title IX. At the same time, however, Title IX may have been a factor reinforcing and strengthening forces already in motion. Whether the status of women would have risen at a slower pace in a co-educational institution in the absence of Title IX is an impossible issue to assess methodologically.

A second question raised by Title IX is one similar to earlier discussion of OSHA regulations. That is, how much is enough? Groups seeking enhanced status are, of course, not easily satisfied by incremental improvements. Especially regarding the employment of women in faculty and staff positions, the "interpretability" of Title IX could pose severe cost implications for the College. No "goal" of "quota" (only a Jesuit especially learned in scholastic philosophy can tell the difference) has been imposed on the College. However, any requirement to increase substantially and quickly the number of say, women faculty members, can only result in higher institutional costs in recruitment, legal services, and staff time. Indeed, the College has already increased its recruitment expenditures in the effort to be responsive to general affirmative action concerns by including more women in the interview pool of candidates from which faculty appointments are made. However, depending on how Title IX is interpreted, enhanced status for women may require more than higher recruitment budgets or the compilation of an institutional self-study. Price tags always accompany the attainment of laudable goals.

3. Equal Employment Opportunity Commission Report

Yet another document mandated by federal regulations is the biennial report on "Higher Education Staff Information" (EEO-6) required by the Equal Employment Opportunity Commission. According to the Commission's instruction booklet, "The filing of the EEO-6 report is required by law; *it is not* voluntary" (emphasis in original). All higher education institutions with fifteen or more employees must submit the report. The amount of staff time consumed by meeting such a requirement is suggested by the fact that the EEOC instruction booklet alone is seven pages in length.

The kinds of information required include the number of full-time staff and their "principal activity"; the number of individuals working under 9-10 month contract or 11-12 month contract; the number of faculty members--by both tenure and non-tenure status; data on part-time employees; and the number of staff supported by "soft money." Moreover, faculty data must be accompanied by information on "sex and race/ethnic" breakdown in the tenured, non-tenured on track, and other non-tenured categories. The attempt to compile such information on a biennial basis is no inexpensive task. The composition of faculties changes constantly, and an immeasurable amount of staff time is required in filling out such reports. However, perhaps the most unsettling issue is the uncertain purpose which such information is designed to serve. Are the reports vehicles for information or potential weapons in the EEOC arsenal? Depending on the ultimate purpose, the cost of such reports may go beyond the expenditure of staff time in compiling them.

4. The Buckley Amendment

The enactment of the Family Education Rights and Privacy Act in 1974 (the "Buckley Amendment") created much anxiety among higher education officials. The logistical meaning of compliance and the procedural implications of the act for colleges and universities were, at the time, issues of intense concern. At Franklin and Marshall, the act produced a brief flurry of activity in the attempt to codify institutional policy pursuant to the goals of the legislation. However, the complications entailed by the Buckley amendment have been much less burdensome than originally feared.

According to one administrative official, Franklin and Marshall "has always run a pretty wide open ship," for students have had access to academic records--except for letters of recommendation--at any time. The Buckley Amendment formalized what had generally already been institutional practice. However, the amendment did require compilation and publication of specific procedures designed to enhance and protect the information rights of students (see Appendix C). Such procedures are published in the College Handbook.

Some amount of staff time was expended in discussing, planning, and writing the procedures. Beyond that initial effort, however, staff time costs have been minimal. A relatively small number of students have chosen to exercise their rights under the legislation. Some additional paperwork is required in writing letters of recommendation (students may waive access to such recommendations), but such procedural changes have not been burdensome. One uncertain "cost" of the legislation may be that faculty members are less candid in their evaluations of students. However, such costs--if indeed they can be so termed--are ultimately borne by other institutions seeking evaluations and by the students themselves.

Certifications

Perhaps the most inevitable of the reports the College must submit to government agencies are the various certifications of student enrollment status. When students receive funds through loan, scholarship, or veterans' programs, the funding agencies not unreasonably request such information. For example, receipt of funds by veterans is contingent on periodic submissions of enrollment certification to the Veterans Administration. Similarly, such information is also required by government agencies funding student loan and scholarship programs. Again, some amount of staff time is expended in submitting such information--especially in the financial aid and registrar's offices--but the time so spent may be the inevitable cost of substantial dependence on student aid programs.

II. Regulations as Conditioners of the Educational Mission

Given Franklin and Marshall's primary role as an educational institution, among its most crucial concerns are hiring and promoting faculty members, making admissions decisions on students, establishing and revising curriculum, and attempting to insure a vital environment for student life. All other College functions are in some way targeted to these concerns. To some degree, all regulations increase the time or financial costs which the institution must bear. All regulations, consequently, at least indirectly affect the educational mission of the College. However, some regulations may have implications beyond increased costs. Rules which change (or threaten to change) institutional decision-making procedures or in some way shape judgments made on faculty, students, and curriculum are--or should be--the crux of the debate over regulations. The importance of government regulations affecting the College as an educational institution is commensurate with the importance of the ultimate purposes of the institution.

1. The Enrollment of Veterans in Courses

One interesting example of a regulation which could potentially shape student choices of courses is the Veterans Administration "85-15" rule. Simply stated, the Veterans Education and Employment Assistance Act of 1976 provides that "no more than 85 percent of those enrolled in a course of education be recipients of VA educational payments or other forms of federal educational assistance" (letter from Senator Alan Cranston to Registrar Nancy Honaman, May 20, 1977). The apparent motivation for the rule is that some institutions may establish questionable programs primarily for veterans, simply to take advantage of available financial aid programs.

The prevention of such abuses is certainly a legitimate public policy goal. However, the administration of the rule may have educational implications for an institution like Franklin and Marshall. Monitoring each course which enrolls students receiving educational benefits to determine whether the "85-15" rule is not violated is, first of all, a time-consuming and expensive process. More importantly, however, implementation of such a rule might potentially complicate the educational life of the institution. For example, were the "85-15" rule applied to each individual course, a veteran could not enroll for an "independent study" with a professor since the student would comprise 100% of the enrollment in that course. However, the net educational effect of any rule prohibiting veterans from taking independent study courses is nothing short of an absurdity.

The rule has, so far, not affected the College. Veterans Administration has exempted institutions where veterans comprise less than 35% of total enrollment, and the number of veterans at Franklin and Marshall is relatively small. However, the illustration does suggest the possible collision between the achievement of laudable public policy goals and the pursuit of the educational function on individual campuses.

2. The Buckley Amendment and Student Admissions

Granting student access to educational records has not posed administrative difficulties for the College. One administrative official termed the Buckley Amendment a "flash in the pan". The amendment required some adjustments in regulations that at the time were thought of as a monstrous burden. However, those adjustments were handled, and the amendment did not really intrude on College procedures. Nonetheless, the Buckley Amendment does have other ramifications which hinder the process of making judgments about students in at least two ways. First, since a student is granted access to records only if he or she is enrolled in the institution, files containing information gathered in the admissions process are "sanitized" before they are sent on to other offices in the College. Consequently, the Dean, the Registrar, and counselling office personnel do not have what may be potentially valuable background material on students. The process of aiding, advising, and judging students, therefore, becomes a somewhat more difficult task.

Perhaps even more importantly, the consequences of the Buckley Amendment have greatly complicated admissions judgments on student applicants. As one administrative official put it, "people in the high schools are afraid to write anything. They are copping out." Knowing that particularly candid statements will ultimately become a part of files accessible to students, evaluators either write nothing or retreat to innocuous or obvious material. Interestingly, this lack of real candor is particularly detrimental to the "good solid B" student. As a matter of course, students with transcripts having a preponderance of C's and D's are not admitted to the College, while students with an A average are generally accepted. However, admissions judgments on the "B" student (judgments which could "go either way") are no longer informed by the kind of definitive information which a candid evaluation might supply. An inherently difficult decision is further complicated by the absence of useful information which no raw transcript can provide.

The enhanced difficulty in judging students cannot, of course, be easily measured. However, the illustration suggests an interesting consequence which ripples through educational institutions. Law schools, for example, depend on colleges for useful recommendations of students, and colleges similarly depend on high schools for such evaluations. In each instance, the "costs" of failing to provide candid statements are, in the short run, "pushed up" to an institution at a higher level. The Buckley Amendment seeks to protect the information rights of students, but it is not clear that students moving from one institution to another are inevitable beneficiaries of the legislation presumably designed in their interest.

3. Reguations in Student Aid Programs

As colleges become increasingly dependent on student financial aid programs, the rules and regulations accompanying the receipt of such funds assume greater importance. Perhaps more than any other higher education officials, student financial aid officers must develop a deep and continuing knowledge of federal regulations and attendant documentation requirements. Such intimacy is the first rule for survival. However, any analysis of financial aid regulations must be tempered by the acknowledgment that public purposes reasonably demand the fair and legitimate use of public funds. Rules may be entanglements, but they may also be protectors of a public trust.

Governmental willingness to protect that public trust is indicated by the number and scope of federal rules on financial aid. For example, the Office of Education's Student Financial Aid: 1977-78 Handbook is a document several hundred pages in length. The rules contained therein can be an administrative jungle for financial aid officers. As one College official declared, he is concerned by "the crazy nitty-gritty rules" which seem to entangle financial aid divisions. For example, Supplemental Educational Opportunity Grant (SEOG) rules require that a student demonstrate at least one-half need ($3,000 at Franklin and Marshall) before becoming eligible for the program. And, the institution must be able to document its financial aid decisions as shaped by such rules.

Beyond heightened administrative complexity, perhaps the most important consequence of such rules is reduced autonomy for financial aid officers, a result which can be detrimental to some students applying for aid. An administrative official put it this way: "We want to preserve and professionalize the judgment of financial aid officers as the single and most important element in financial aid decisions. Federal regulations are taking away from us the opportunity for such judgment". For example, SEOG rules require that the neediest students have first claim to funds provided by the program. However, the student with greater need may be eligible for other programs in which the student of lesser need is not eligible. Consequently, such rules may be detrimental to less needy students who are nonetheless needy.

A financial aid officer with good judgment and discretion can construct optimal aid packages for students. However, the reduction of this discretion is a classic illustration of the collision between public purposes and institutional processes. From the perspective of regulators, institutional "flexibility" risks abuse of financial aid funds. Financial aid officers, however, view "abuse abatement" rules as limits on the discretion needed to serve the best interests of individual students. The quagmire of financial aid rules has, to a large degree, resulted from this collision of perspectives. Ironically, the demand for increasingly sophisticated rules which acknowledge the diversity among institutions and allow "legitimate" discretion will probably deepen the quagmire.

4. Equal Opportunity Regulations

No regulatory issue has stirred such fierce passions as the debate over affirmative action and sex discrimination. The controversy is fired by the demands of emergent groups seeking higher occupational and educational status. That the issue should be so volatile is understandable, for the stakes are so high. With the sharp decline in educational growth rates and the prospect of a "steady state" environment for the foreseeable future, conflict over access to a limited number of positions is inevitable. Debate over allocation of shares to limited resources is a difficult, and familiar, problem in politics. However, the affirmative action controversy is further complicated by the perceived threats to institutional procedures and standards of merit.

Franklin and Marshall is not required to file as a matter of course an affirmative action plan under Executive Order 11246. The order applies to institutions having federal contracts in excess of $10,000, and the College, receiving contract funds less than that amount, does not meet the definition of a federal contractor. Nonetheless, the College has not escaped the consequences of the debate over affirmative action. Prohibitions against sex and race discrimination in employment are now firmly embedded in a variety of federal and state legislative enactments and implementing regulations. Moreover, the establishment of public bodies (such as the Equal Employment Opportunity Commission), which can receive and act on individual charges of employment discrimination, makes practically every employing institution in society potentially vulnerable to complaints of discrimination. And, the charges can materialize with the suddenness and capriciousness of a summer thunderstorm.

Four individuals have charged Franklin and Marshall with sex discrimination in either hiring or promotion decisions. Three of the individuals were rejected in the hiring process (for one administrative position and two faculty positions) and one was denied tenure. Three of the complaints were filed with the Equal Employment Opportunity Commission and have been resolved. The fourth complaint has been filed with the Pennsylvania Human Relations Commission and is now pending.

Perhaps the most obvious consequences of these cases have been the legal and time expenditures which the College has incurred. Such cases are characterized by requests for data and mandated explanations of institutional policy, and, not surprisingly, continuing institutional consultations with the College solicitor have been necessary to determine appropriate legal rights and responsibilities. The Dean's office, the Vice President for Administration, and affected department chairmen have spent innumerable hours discussing the cases and their implications, gathering and supplying requested data, and granting depositions. However, increased financial and time costs are not the most important consequences of the charges.

The first complaint of sex discrimination was filed with the EEOC by a woman rejected for an administrative position. The hiring College official stated in his letter to the applicant that most of the employees in the department were female and that he preferred a man for the position in question. The College was notified of the complaint more than fourteen months after the charge was originally filed with the EEOC. More than a year after this notification, an EEOC official investigated the complaint and found that "there was a reasonable cause to believe" the charge was true. Among the data the College was required to submit was detailed information on the number of women holding administrative positions and their salaries.

Three years after the original charge was filed, the College signed a conciliation agreement in which the institution provided the charging individual a small monetary settlement and promised that she would be considered for the position--which had been eliminated in a personnel reduction--should it again become available during the duration of the agreement. Moreover, the College was required to advertise to all employees and distribute "to all personnel involved in its hiring processes" a "Statement of Policy" (Appendix D) affirming institutional commitment to equal opportunity. The conciliation agreement also required, for a period of two years, that the College submit to EEOC a semi-annual report on the institution's "affirmative action program" (Appendix E) which the College promised to "make a good faith effort to implement." The two-year reporting period expired in April, 1976, and the College has had no further contact from EEOC on the case.

A second woman (a faculty member) filing a charge with the EEOC alleged the College guilty of sex discrimination because "Three men were granted tenure at the time it was denied to me, and I believe I was as qualified to meet the criteria of tenure as they were." The Committee on Professional Standards, a group of five faculty members elected by the faculty, makes recommendations on tenure and promotion. Since the President and the Board of Trustees traditionally accept the Committee's recommendations, the procedures of the Professional Standards Committee were at issue in this case.

In investigating the complaint, the EEOC requested that the College supply a variety of documents. Among these were committee minutes on the decision; a list of committee members by age and sex over a six-year period; data on all tenured and non-tenured faculty members; and "a list of all faculty members denied tenure from 1968 to 1974 and the reason for denial of tenure." EEOC investigators were given the opportunity to review information on College tenure policies as well as supporting data on specific tenure decisions. One EEOC representative had to be instructed on the meaning of tenure.

The College submitted an exhaustive seven-page position statement on the case. Fifteen months after the original charge was filed, the EEOC informed the College that the Commission determined "there is not reasonable cause to believe that a violation of Title VII of the Civil Rights Act of 1964, as amended, has occurred and has therefore closed the charge." Nine faculty members, all male except for the charging party, were considered for tenure in the year in question. Of these, three were granted tenure and five were denied. Apparently crucial in the EEOC's decision was its determination that "aside from Charging Party, 5 males were denied tenure; one of these males taught in the same department as Charging Party; the faculty committee took pains in making its decision regarding tenure for Charging Party; and tenure reconsideration for one male was unsuccessful, just as it was for Charging Party." The College successfuly defended against the sex discrimination charge, but, perhaps more importantly, the procedure for making tenure decisions by a faculty committee elected by the faculty was preserved.

A third sex discrimination charge was filed with the EEOC by a man who unsuccessfully applied for a faculty position. He alleged that "my application has not been acted on with the same favorable attention as those of several women I know. I found out that the positions available are being reserved for women. I feel that I have been discriminated against because of my sex (male)." In its investigation, the EEOC requested that the College respond to 23 questions, many of which required research and documentation justifying rejection of the applicant. Among the information required was a list of qualifications the applicant lacked; the total number of applicants--and the number of male applicants for the position; "a list of the unsuccessful applicants" and the "reasons for rejection"; and a "work force analysis" of the department in question. Interestingly, the sample work force analysis included with Commission's questions (which frequently referred to "the company" rather than "the College") used the illustration of a machine shop having job titles such as machine attendant, screw lathe operator, toolmaker, and foreman.

The College submitted responses to each of the questions, including information on unsuccessful male and female applicants and the conclusion "that others have been preferred on the basis of sex is not supported by the evidence." Less than one year after the original charge, the EEOC determined that no violation occurred, citing among other evidence the fact "that the candidate eventually selected was male." While the charge was dismissed, the case did indicate to the College and the department in question the crucial importance of evidential documentation in justifying--and potentially defending--hiring decisions.

A fourth sex discrimination charge against the College has been filed with the Pennsylvania Human Relations Commission by a woman whose application for a faculty position was not successful. Similar to EEOC procedure, the PHRC requested the College to supply detailed responses to fourteen questions relating to the case. Among the information requested was an "applicant analysis chart" listing "the name, address, telephone number of the applicant, the date of the application, the sex of the applicant, the jobs sought or was considered for, and the date the applicant was hired or rejected. This chart should cover the period of 12 months prior to the complainant's application." In response to this request, the College submitted a list of more than 300 applicants for faculty positions in the department in question, including the name, address, sex, telephone number, and application date of each applying individual. The decision of the Pennsylvania Human Relations Commission is still pending in this case, but the information already requested of the College simply reinforces the importance of extensive documentation in support of hiring decisions.

5. Procedural Implications of the Equal Opportunity Debate

The College has not escaped the litigious atmosphere which envelops the debate over equal opportunity. One important consequence for the institution--particularly in personnel decisions on faculty--has been the subtle but recognizable change that has taken place in the College's decision-making style. As one administrative official put it, "Much more care is taken in keeping records and in what we say to people. We are much more guarded...and what we say is much less freighted with value. Consequently, we are probably less helpful to people than we might be. There is a tendency to stick to the narrow band of business, feeling that lawyers are constantly looking over our shoulders. We are not as spontaneously open or free-wheeling now." Equal opportunity regulations contribute to changes in procedure already tightened by heightened attention to decisions with financial implications. College officers are now acutely aware that a concern for records, correspondence, procedures, and documentation is essential in personnel decisions. Faculty members within the individual departments--particularly those affected by sex discrimination charges--are also increasingly sensitive to the importance of procedural integrity in personnel recommendations.

The relationship between the Deans' Office and department chairmen has also been affected by equal opportunity regulations. The office makes information on such rules available to chairmen and monitors more closely personnel decisions. In order to spread information as widely as possible, the deans have insisted on advertising positions in two appropriate publications. The way in which an advertisement reads has become very important, and the Deans' Office reviews every advertisement for a faculty position. Moreover, in all correspondence between candidates and the institution, the College must state explicitly its equal opportunity policy. The office has verbally encouraged department chairmen to expand the candidate pool as widely as possible by seeking out women and minorities. One College officer declared that "At times, we may overcompensate in at least one way. If, for example, a woman's vita does not place her in the top two or three candidates, we may consider inviting her to campus anyway as an extra candidate above our normal number. Such overcompensation in recruitment may not have happened without the regulations." However, responding to external pressures and being sensitive to departmental prerogatives at the same time is no simple task. One administrative official put the problem this way: "The Deans' Office walks a tightrope between allowing departments to set their own tone--a deeply imbedded and long-standing College tradition--and trying to encourage them to extend themselves in order to insure that there are able women and minorities in the candidate pool."

A fundamental complication in the attempt to meet equal opportunity requirements (assuming that such requirements can be defined precisely) is that no single individual can determine personnel decisions on faculty hiring, promotion, and tenure. The individual departments themselves choose candidates for new hires and the Committee on Professional Standards interviews all such candidates before a hiring decision is made. The departments make tenure and promotion recommendations to the Professional Standards Committee which makes the final decisions. In each of these cases, faculty members are making recommendations to other faculty members on matters which they judge to be ultimately the most important in the life of the institution. And, not surprisingly, external pressures intruding on that process are not heartily embraced by the faculty.

In its faculty personnel decisions, the Professional Standards Committee makes judgments with perhaps the most crucial implications for the educational mission of the College. Merit considerations rather than affirmative action plans are the criteria on which these decisions are based. According to one administrative official, "the Committee members feel that their role is to interview the candidates for appointment presented to them and to determine whether or not such candidates are acceptable. The Committee wants to make decisions on merits and tries to be as fair and non-prejudicial as it possibly can be. It does not see its role as an active one in terms of increasing the number of minorities and women on campus. The Committee has attempted to make its decisions--appointments, tenure, promotion, etc.--on the basis of 'blind justice', and this has continued even as federal regulations have emerged."

Like all other institutions, the College must take great care in its personnel judgments. Documentation of decisions and a procedural "orderliness" have become commonplace characteristics of the process. While no easy weighting of disparate factors is possible, financial stringency, a steady state environment, and equal opportunity regulations all require that each decision be made with careful deliberation and in full knowledge of potential implications. However, the procedure for making faculty personnel decisions is a fragile one. It is held together by acknowledgment of its importance, trust, and the firm belief that presentations based on merit will most readily hurdle obstacles in the process. Subtle pressures threaten to impinge on that process. External demands from regulatory agencies to change substantially the procedure will inevitably incur institutional resistance and, potentially, internal strife. The dissolution of a personnel decision-making process based on merit will simply make Franklin and Marshall a different kind of institution. The evolution of federal regulations and their future consequences, hence, become matters of vital concern to the College.

III. Federal Regulations and Anxieties Center About the Future

Existing regulations have certainly increased financial and time costs which the institution must bear, but the precise determination of such costs is an elusive task. Since the College cannot easily transfer costs to "consumers," one important consequence of regulations is increasing pressure on an already strained budget. Some regulations have been relatively minor annoyances, while others complicate or frustrate the process of making decisions. However, no federal regulation has diverted the College from its central purposes. The educational mission of the institution remains intact.

The College's battles with budgetary deficits earlier in the decade have indicated the necessity of thoughtful planning. The environment for higher education is not hospitable to careless decisions or immediate judgments based on the short term. While all institutions to some degree "muddle through", enhanced attention to comprehensive planning has become an important ingredient for survival. A sensitivity to potential developments in the College's environment allows more informed decisions. At the same time, anticipation of future problems seeks out the unfavorable implications of proposals which may affect the College. Consequently, a concern about proposed federal regulations, the precise meaning of current rules, or possible extensions of existing policy, is a natural component of institutional planning.

Analysis of the current costs of regulations must be ordered by an appreciation for the various societal roles which the College plays. Similarly, any attempt to review the implications of proposed federal rules must be sensitive to the disparate functions and characteristics of the institution. The College is an employer, a non-profit institution, and a place for educating people. Each of these characteristics may draw different federal regulations. While all possible developments appear overwhelming in their implications for any given institution, precision in analysis may be the only antidote to the kind of paranoia which inhibits credible national debate on future policy.

The College on a Non-Profit Institution

As an independent institutoin, Franklin and Marshall naturally relies on private gifts as substantial sources of funds. Private giving helps to close the substantial revenue gap between student tuition and total educational costs, and the support of friends and alumni is likely to continue and even increase in importance. A commonplace view in institutions like Franklin and Marshall is that such support cannot be considered apart from the general debate about federal tax policy. Tax "reform" is, of course, a perennial political issue, but no tax policy decisions are neutral in their consequences. Tax rules which eliminate the standard deduction as a "loophole" also threaten to eliminate substantially the motivation which fuels private giving to the College.

Interestingly, even public policy debate on the charitable deduction may affect private giving. One College official declared that "The constant threat of change in the tax laws is a real problem, more so than the actual changes that have been made. It is difficult to do the kind of financial planning that large gifts and bequests require within a framework that is shifting and uncertain. Debate on tax reform has an unsettling effect on donors, the impact of which is difficult to measure." The same official indicated that a change in the charitable deduction would have "devastating" consequences for an institution like Franklin and Marshall. The College last year received $1.6 million in private cash gifts and, without the charitable deduction, "that amount would have withered by more than half."

Research on the issue suggests that elimination of the charitable deduction would result in a greater revenue loss to colleges than the federal treasury gain of tax dollars (Davidson, pp 52-69). From one perspective, the charitable deduction is viewed as a tax "loophole." However, from another perspective, the debate may be over alternative methods of educational funding. The charitable deduction permits a host of random, private, marketplace decisions in which individuals choose to give funds to non-profit institutions which may be allowed substantial discretion in their use. Even though the elimination of the charitable deduction would somewhat increase federal tax receipts, there is obviously no guarantee that such revenues would flow back to non-profit institutions in the form of federal programs. Since most federal programs for education are targeted to specific purposes, colleges would likely have little discretion in the use of any "new" funds. Consequently, the charitable deduction debate has obvious implications for institutions like Franklin and Marshall. The outcome of that debate may result in decreased private giving and reduced discretion on how College funds are spent.

Rules on fund-raising comprise another set of regulations which could have serious implications for the College as a non-profit institution. Innumerable charitable organizations solicit funds from the public, and the goal of fund-raising regulations is to prevent the kind of abuses which occasionally receive media attention. Such rules pose several problems for the College. First, more than half the states, eight cities, and many counties have their own fund-raising regulations. Procedural and reporting requirements vary so widely that no college can possibly be in compliance with every one. Strict enforcement of the rules by each jurisdiction would make College fund-raising efforts vastly more difficult. A complicating factor is the demand that solicitation literature include information on the costs of fund-raising. However, depending on the measurements used and the definition of funds raised, solicitation costs can vary widely. For example, depending on the standards used, costs can range from 6% to 23% or more of funds raised. The requirement to publish costs on which there is no agreement cannot enhance the College's effort to increase private giving.

The College as Employer

The exercise of employee rights within institutions is not likely to lessen in the foreseeable future, and continuing claims to such rights have cost implications for the College. The Employee Retirement Income

Security Act of 1974 illustrates the kind of political support available for the protection of employee interests. ERISA set standards and guidelines on the management of welfare and pension funds, and the legislation is symptomatic of the heightened attention given the fiduciary role. One potential consequence of such attention is that fund managers may tend to be more conservative in their general investment strategies. The questioning of judgment and the possibility of uncertain penalties should investement strategies fail may enhance the tendency among fund managers to "play it safe." One College official indicated that Franklin and Marshall is not as aggressive as it would like to be in the management of the endowment portfolio, and that "the tendency now is to take the edge off aggressiveness." The consequences of such conservatism are not easily measurable. While investment strategy has not yet changed drastically, more rigorous scrutiny of the fiduciary role may stultify investment policies over time.

Perhaps the most significant threat springing from the College's role as employer is the proposal to raise mandatory retirement to age 70. The speed with which the proposal emerged as a public issue has motivated belated discussion and analysis of the consequences for employing institutions. Raising the mandatory retirement age has obvious political appeal, not the least of which is that increasing employment "options" for older citizens may reduce pressure on the sagging social security system. The proposal has serious implications for the College both as an employer and as an educational institution. Faculty members exercising the right to postpone retirement will increase substantially the salary costs which the institution must bear. Moreover, in a "steady state" environment, the proposal will inhibit the flow of new talent into junior faculty ranks.

Ironically, the attempt to eliminate "age discrimination" in older ranks may result in discrimination against young people trying to enter the profession. Perhaps most importantly, the proposal will almost inevitably increase pressure to change the faculty tenure system. Any proposal to extend further an essentially life-time contact will fire the already potentially volatile debate on the tenure system. The outcome of that debate cannot simultaneously have favorable consequences for both institutions and their tenured faculty. (See Appendix F, "On Postponing Retirement" by Richard F. Schier, for a fuller treatment of the mandatory retirement proposal.)

The College as an Educational Institution

Extensions of present policy or establishment of new policy having educational implications should be high on the regulatory issue agenda. The evolution of the College's educational mission depends in no small way on future regulatory decisions. Reasoned analysis must precede the promulgation of new rules, for some potential regulations may change substantially institutional processes for making decisions. For example, extensions of the Buckley Amendment to grant records access to all applicants, whether or not they are enrolled, would complicate vastly decisions on admissions. This is, according to one College official, "potentially a real bomb." If the entire admissions record becomes open, the candor of evaulations will become even more limited. Objective criteria, such as SAT scores and transcripts, would become the primary determinants of admissions decisions. Applicants having access to files might say "you turned me down because of my nationality" or "this is a good recommendation but you still took someone else" or "how can you tell how good a student I'll be in a 45-minute interview?" Decisions on the very best or very worst applicants are rarely difficult, but judgments on students in the "middle range" already tax evaluative abilities. For applicants in this middle range, where outside observers might consider judgments one way or the other as being arbitrary, proposals for access to records would obviously complicate the admissions process.

Rules extending further the rights of students as consumers would also complicate the admissions process. The protection of consumer rights is a legitimate policy goal, for some institutions have been guilty of self-promotional policies that, charitably, fail to meet expectations of honest behavior. Franklin and Marshall has always attempted to portray its programs accurately, but the College is now far more careful about the content of catalogs and general institutional literature. Commenting on the consumer rights movement, one official declared that "We know it's out there, and, in good common sense fashion, the institution is crossing the t's and dotting the i's more carefully." However, more comprehensive consumer information is not free. Any requirement to publish precise information on the career patterns of graduates in specific fields or departments in any given year would necessitate costly research. Similarly, providing even more extensive information on aid programs and College policies to financial aid applicants cannot be accomplished without higher costs to the institution. Consumer rights rules exemplify the axiom that someone must pay for the exercise of rights by others.

The accessibility of College programs to handicapped individuals poses a regulatory problem of immediate concern. Section 504 of the Rehabilitation Act of 1973, as amended, declares that "No otherwise qualified handicapped individual in the United States...shall, solely by reason of his handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Rules implementing the legislation were published by HEW's Office for Civil Rights and became effective in June, 1977. Suggesting the complexity of the rules, the National Association of College and University Business Officers has distributed to member institutions a thirty-three page document attempting to explain and analyze the regulations. Like almost all other higher education institutions, Franklin and Marshall now confronts the task of assessing the consequences the rules have for campus programs and facilities. The "interpretability" of the rules means that the task will not be easy, for "reasonable accommodation" to the handicapped and program "accessibility" are not terms of readily obvious precision (NACUBO pp. 14-18).

Sensitivity to the special difficulties of handicapped individuals is a public policy goal which needs no justification. However, as is apparent with other regulations, such sensitivity is not a costless goal. Depending on interpretation of the rules, the College will likely incur some indeterminate costs in structural modifications, changes in course scheduling, and alterations in patterns of institutional behavior. Moreover, the rules may shape the pedagogical style of individual faculty members. The use of blackboards, term paper writing requirements, and course reading materials may require adjustment to the individual needs of handicapped students. The day-to-day process of education cannot escape at least incremental changes. Institutions like Franklin and Marshall cannot reasonably oppose the goals of regulations on the handicapped. Such institutions can, however, reasonably question the level and scope of costs which they may be asked to incur.

More than any other set of rules, potential developments in affirmative action regulations threaten to divert the College from its central mission. To the degree that new rules (or interpretation of current rules) displace considerations of merit as controlling in faculty personnel decisions, the College as an institution for educating people will risk grave consequences. One administrative officer declared that "My real concern about affirmative action is the lowest common denominator argument. I've heard it said by government officials that we don't need to hire Ph.D.'s, for we can use holder's of master's degrees to teach. All we need in this matter is one successful case against our position and everybody with minimal degrees will be pounding the door." Franklin and Marshall students pay high financial costs for their education, and they legitimately deserve the very best instruction possible. Any rule which subverts the continuing search for high quality--in both new hires and tenure decisions--may be a fatal threat to the institution.

While the College has been subject to various complaints of sex discrimination, the process for making judgments on faculty has remained intact. That process is a crucial one, as indicated by the high tenure standards addressed in the Faculty Handbook: "[T]enure should be granted not 'merely on a judgment that a candidate is satisfactory but on a high degree of enthusiasm for his qualifications. Mere adequacy should not earn a thirty year contract'....In sum, the burden of the case for a favorable tenure decision rests on the probationary faculty member and those who support him. The case should not be merely reasonable--it should be persuasive beyond a doubt." The requirement for positive evidence of merit rather than simply the absence of negative evidence is the central ingredient in the search for high quality. Any federal regulation or interpretation which dilutes the demand for positive merit cannot fail to have pernicious consequences for the College.

The evaluation of affirmative action rules can have at least one other effect which changes the decision-making style of Franklin and Marshall. Traditionally, the institution's operations have been structured by an array of individual and committee decisions on curriculum revision, faculty positions, general institutional policy, and other matters. Decentralized decision-making in some areas, however, is threatened by the emergence of external demands on the College. For example, while individual departments play the lead role in faculty hiring, the institution must bear the legal burden of any complaints charging discriminatory behavior. Consequently, a more centralized decision-making process within the College may develop in response to the new kinds of personnel pressures springing from public policy judgments on affirmative action. A greater central administrative concern for advertisement, recruitment, records, and documentation policies may limit decentralized decision-making. The contours of "power" within higher education institutions have always been matters of spirited debate, and a certain "disorderliness" (some might call it anarchy) has sometimes been given the status of virtuous behavior. However, federal regulations on affirmative action and equal opportunity can only increase pressure on an already fragile system of relationships.

The Need for Reasoned Analysis and Debate

The volatility of the debate over federal regulations must be matched by the conviction that only reasoned analysis can bring some order to the mass of relationships between government and higher education. As an institution in this society, for example, Franklin and Marshall cannot be immune to the pervasive effects of public policy choices. The College is a non-profit institution and an employer, and a variety of governmental actions can affect the institution in these roles. The College can demand that public policy debate on employer and non-profit regulations be informed by an awareness of the financial implications of such rules. However, any search for immunity will be a fruitless strategy.

All governmental rules in some way affect institutional behavior, and assessment of such rules must be characterized by discretion and good judgment. Exaggeration of unfavorable consequences implied by federal regulations will not enhance the credibility of higher education institutions. At the same time, "over-compliance" is a default of institutional responsibilities. Regulation which directly affects the educational purposes of higher education institutions should be the central issue in the regulatory debate. Judgments on faculty, students, and curriculum are the characteristics which distinguish educational institutions from all others in society. Liberal arts colleges are fragile and--in the best sense of the word--precious places. Federal regulations which divert the ultimate purposes of these institutions cannot be wise decisions.

References

Institutional files and personal interviews with College officials have been the principal sources for this study. Institutional publications have provided important background information. The *Campus Guide, Franklin and Marshall College* contains a succinct history of the institution as well as a variety of facts on faculty, students, and academic programs. The annual *Report of the Treasurer* (1965 through 1977) provides a summary of financial data. Richard Hoffman's *Measures of Growth and Change at Franklin and Marshall College, 1960-1975* has been an invaluable source of historical data and time series analyses. A private communication from Senator Alan Cranston (D.-Cal.) to Registrar Nancy Honeman offered a useful perspective on the administration of programs for veterans. The *Student Financial Aid, 1977-78 Handbook*, published by the Office of Education in the Department of Health, Education and Welfare, is a sobering review of the administrative complexity in student aid programs. The *Resource Notebook on the Federal Government and the Small Private College*, published by the Council for the Advancement of Small Colleges (Washington, D.C., 1976), comprehensively surveys the variety of programs and policies linking government and liberal arts colleges. Mary Martens' "Federal Regulations and Discrimination Issues" and Oliver R. Davidson's "Accreditation, Educational Consumer Protection, Privacy and the Buckley Amendment, Tax Reform and Charitable Giving, Veterans Administration Rules, Copyright Law" have been particularly helpful. *The Costs of Implementing Federally Mandated Social Programs at Colleges and Universities*, authored by Carol

Van Alstyne and Sharon F. Coldren and published by the American Council on Education (Washington, D.C., June, 1976), provides a valuable perspective on the institutional costs of federal programs. HEW Issues Final Rules for the Handicapped, published by the National Association of College and University Business Officers (Washington, D.C., Special Report 77-6), offers important information on regulations affirming the rights of handicapped individuals.

APPENDIX A

FRANKLIN AND MARSHALL COLLEGE
Lancaster, Pennsylvania

NOTICE TO EMPLOYEES

On Labor Day of 1974, a new law was enacted to protect the interests of workers in pension and welfare (insurance) benefits connected with their jobs. Its title is "Employee Retirement Income Security Act of 1974," but it is often referred to by its initials - ERISA.

ERISA requires plan administrators - the people who run plans - to tell you the most important facts you need to know, in writing and free of charge. They must also let you look at plan documents, and buy copies of them at reasonable cost, if you ask.

Also, a great many people have control over employee benefit plans. ERISA says that these people - called "fiduciaries" - must act solely in your interest and be prudent in carrying out their plan duties. ERISA also has other special rules that limit what a fiduciary is allowed to do. Fiduciaries who violate ERISA may be removed, and have to make good losses they cause to the plan.

ERISA requires Franklin and Marshall College, the administrator of the Total Disability Insurance Plan to file certain information about the plan with the U.S. Department of Labor. A description of the plan's provisions must be filed with the Department of Labor by May 30, 1976. Franklin and Marshall College must also file an annual report with the Department of Labor by October 15, 1976. The annual report gives detailed financial information about the plan. Franklin and Marshall College is also required to send a summary of the annual financial report to you, at no charge.

Plan documents and other plan information must be provided to you by Franklin and Marshall College if you request this information in writing. Franklin and Marshall College may make a reasonable charge for these documents. You may wish to find out how much the charge will be before making a written request. However, all plan documents must be made available for your examination at the Office of the Vice President, Administration, Franklin and Marshall College, College Avenue, Lancaster, Pennsylvania, 17604, and certain other locations, such as worksites and union halls, at no charge.

If you have any questions about this Notice or your rights, contact John F. Clough, Vice President, Administration. Also, the nearest Area Office of the Labor Department has people who will be able to assist you or provide you with additional information.

May 20, 1976

APPENDIX B

TITLE IX

SELF-STUDY

Franklin and Marshall College

Lancaster, Pennsylvania

June, 1976

Franklin and Marshall College, founded in 1787, is a four-year liberal arts institution located in Lancaster, Pennsylvania. Franklin and Marshall College was an all male college until September of 1969, when following several years of study and deliberation by the Faculty, students, administrative officers, alumni and the Trustees, a decision to become a coeducational college was implemented. Prior to that date some women had matriculated as special students. The various studies and recommendations which preceded the Trustees' decision are appended to this evaluation. The rationale for the decision was grounded in the widely shared view that an environment in which only men were present was sharply at variance with reality and that the educational program of the College would be improved by the addition of women to the student body, the faculty, the administration and staff of the College. The recommendations of the studies which preceded the Trustees' decision anticipated many of the goals, objectives and the underlying values which were later reflected in both federal and state legislation designed to achieve equality of treatment without regard to sex. It is possible that some of the language and details of these reports and recommendations do not in every instance meet the legal requirements of recently enacted statutes and judicial decisions but they clearly reflect an intent on the part of Franklin and Marshall to self consciously take positive steps to make the institution one in which women would find satisfaction as students, faculty members, administrators and participate in the various mechanisms of institutional governance and decision-making.

The decision to be a coed college carried with it a commitment to add women to both the professional and non-professional segments of the College's employees as well as an effort to attract young women to its student body. The objective stated in the report is to have a student body of whom at least forty per cent would be female by 1979. This objective was not accompanied by any specific target as to the size of the total student body, but the studies and the recommendations were developed during a period when most colleges and universities were assuming quantitative and qualitative growth and development. It is therefore essential to this evaluation to acknowledge the unstated assumption that the continued growth of Franklin and Marshall would permit the College to accommodate increasing numbers of students including young women and afford many additional openings as likely positions for female professional and non-professional personnel.

In 1969, the enrollment was 1832. In 1976, the full-time enrollment is 1933 and the College has established an enrollment of 1850 as one appropriate for its physical and monetary resources, given the stringent financial realities of the 70's.

The table below covers the period 1969-76. It reflects the College's progress towards the objective enunciated at the time the coeducational decision was implemented and the radical shift from growth and development to what had become known as the "steady" or "stable" state. The table presents comparative data for the student body and each of the three categories of college employees.

	1969	1976
Students		
Total	1832	1933
Women	129	652
% Female	7%	33.7%
Faculty		
Total	164	137
Women	7	12
% Female	4.3%	8.7%
Administration		
Total	49	70[1]
Women	11	20[2]
% Female	20.4%	28.5%
Supporting Staff		
Total	264	141
Women	85	89
% Female	32.1%	63.1%

1. Nine (9) positions formerly classified as faculty, now designated administration.

2. One position formerly classified as faculty, now designated administration.

The major fact derived from the data is the reduction from 477 employees in 1969 to 348 in 1976. The data also details the increases in actual numbers and proportion for women in the student body and the work force.

Students

The policy of the College is to admit qualified applicants without regard to sex. The target of a student body with at least forty percent women by 1979 was a minimum goal and is not to be confused with a quota. The present division between the sexes within the student body was achieved in four years and that division has remained relatively constant for the past three years.

Franklin and Marshall embarked on an aggressive campaign to recruit women applicants for admission during the academic year 1968-69. The professional staff formerly all male is now equally divided with two male and two female professionals augmented by three part-time female interviewers who do much of the on campus interviewing of prospective students so that the full-time professional staff may devote their time and energies to off-campus recruiting.

The number of female applicants has increased since 1969 but their proportion of the total pool of applicants remains below the proportion of women in the present student body. A lower proportion of successful female applicants accept offers of admission than do their male counterparts. Admissions is divided into three categories and the following data reflects the lower female matriculation.

Category	Female Offers as a % of the Total	Female Acceptances as a % of the Total
1	42%	35%
2	33%	31%
3	34%	23%

The disparity in acceptances of offers of admission can also be illustrated by the following:

Category	% of Males Accepting Admission	% of Females Accepting Admission
1	35.8%	27.2%
2	26.1%	23.4%
3	18.0%	10.8%

Women applicants account for 40% of those who opt for early decision admission.

The data suggests some difficulty for the College in its stated objective of increasing the number of women in the student body. However, Franklin and Marshall is but one of many formerly all male colleges and universities which went to coed status in the late 1960's or early 1970's. After a brief period of depressed enrollments, most women's colleges have demonstrated a continuing attraction for young women. As a result of these not unrelated developments, and the increasing competition for the most able students, it is clear that the College will face a difficult task in its determination to increase the proportion of women because of the overall market conditions.

The College has engaged in critical self examination in an effort to determine what modifications or adjustments in any phase of the College's total operation would assist in the effort to increase the College's attractiveness to young women. Particular attention was given to efforts to detect any negative factors which were inhibiting matriculation by women. No definitive results were developed by these efforts, though the technique of exit interviews suggests reservations by some women as to the non-academic portions of the College's total operation. A limited social life, and a modest supply of on-campus housing were among the subjective responses obtained. Sororities are permissible, the allocation of housing has been improved and the operation of the recently completed College Center will, it is believed, address many of the expressed concerns. The attrition among female students is slightly higher than for males, but overall attrition is quite low at the College. The attrition experience of Franklin and Marshall female students does not deviate from established national norms. Indeed the entire admission-retention experience of the College is quite similar to that of comparative institutions.

It is the view of the College that the satisfaction of its women students is the most appropriate criteria to apply in any evaluation. Therefore the reactions of women students to both the academic and extra curricular programs of the College appear to be the best source of suggestions for any future modifications or adjustments. The College will continue to carefully monitor the views of women students for clues as to how best to heighten its attraction for young women. However the College does not contemplate any major modification in its educational program. Franklin and Marshall College remains committed to the liberal arts and will not embark on more vocationally or career oriented programs.

Staff

The supporting staff of the College has been reduced by approximately 50% during the period examined in this evaluation. The bulk of those reductions were accomplished by the elimination of custodial positions and the use of a contract cleaning service to perform duties formerly carried on by employees of the College. The contract cleaning service employs both men and women. Women employees have been introduced into the remaining custodial and janitorial positions, and the security department. Obviously the reductions accomplished were virtually exclusively male as 127 jobs held by males were eliminated or filled by women when attrition took place.

Franklin and Marshall's supporting staff includes 77 clerical and secretarial positions and it is this sub-category which experiences much of the College's turnover.

The College follows a policy of bringing vacancies to the attention of its employees before proceeding to recruit on the open market. The policy of promotion from within is followed with the result that most "new hires" are for entry level positions. Advertisements and outside recruiting efforts are monitored to assure they fully comply with both the letter and the spirit of equal opportunity requirements. It is the view of the College that there is nothing in the present employment practices which would warrant any particular policy or procedural change in the context of Title IX objectives or requirements as they apply to staff personnel.

Administrative Personnel

Any assessment of collegiate professional personnel must begin with the observation that the financial stress of recent years has severely curtailed employment opportunities in higher education. Faculty and administrative positions have been reduced, frozen or restricted to well documented necessities. New positions are few and far between and virtually all new hires are at entry level responsibilities and compensation. Prior to the present fiscal pressures, both administrative and faculty personnel were mobile and moved easily and frequently from institution to institution. Opportunities for vertical mobility within and without a given college or university were considerable. Administrative positions have been eliminated, consolidated and downgraded with the result that there is no longer the opportunity for advancement which characterized the profession during the 60's. Administrative positions from the executive level to entry level positions have stabilized. Experienced and otherwise qualified applicants exist for virtually any level position in more than ample supply. Yet the College has managed to increase the number and proportion of women in its administrative staff despite this "steady state". Female applicants have received serious consideration for the two executive openings which took place during the time reviewed in this evaluation. An offer was made to a woman applicant for the position of Associate Dean for Academic Affairs (a position more accurately described as Dean of the Faculty). The two major administrative appointments to the staff of the new College Center are women. Three highly qualified secretaries have been advanced to administrative status. Entry level positions filled during this period have been filled by more women than men. A senior male admissions officer was replaced by a woman. Women were introduced into such administrative areas as financial aid, the office of the Dean of Students, Summer and Evening Division and Athletics. Attrition and turnover has been high, particularly in the entry level positions, but in most instances women have replaced women in those positions. Two Administrative Departments have female directors and their compensation compares with males who hold similar administrative responsibilities. However stability at the executive and director level is likely to restrict opportunity for advancement and to severely limit the occasions in which women candidates may be considered for such positions. The College has not experienced any major difficulty in attracting qualified women applicants for administrative positions, but retention has proven to be a modest problem. Attrition in entry level positions has historically been high without regard to sex and it is probable the College will continue to experience a high level of attrition at that level. To illustrate three different women have held the same position on the professional staff of the Admissions Office in the past four years.

Administrative recruiting and hiring is relatively centralized at the College and for entry level positions, includes a review by the Vice President, Administration and the President of the College who makes the appointment in the name of the Trustees of the College. More responsible positions are filled after a careful screening by a search committee, the officers of the College, and also require the ultimate approval of the President of the College. Under these circumstances, the College has found it possible to develop women applicants for most positions and to secure their serious and earnest consideration by all involved in the hiring process. The proportion of women who have declined offers is substantial. The limitations of a small and somewhat parochial community appear to be the major factor in those decisions, though that observation lacks firm documentation.

Faculty

Recruitment of faculty at Franklin and Marshall is a departmental responsibility. While the Dean of the College, the Associate Dean, Academic Affairs and the faculty elected Professional Standards Committee do in fact interview all candidates brought to campus, and determine the acceptability of candidates; the identification of candidates is normally a departmental obligation. The Office of the Dean of the College has forcefully directed all academic departments to seek both female and minority candidates. All advertisements in professional and trade journals carry the required equal opportunity language. A faculty opening attracts literally dozens of inquiries and most departments are able to develop several well qualified candidates for each vacancy. The Office of the Dean and the Professional Standards Committee properly emphasize professional qualifications in their decisions. Virtually all faculty appointments are entry level, many are for term (most for one year terminal assignments), and few afford an opportunity to enter the tenure track.

In candor, it can be boldly stated that the College is not satisfied with either the number or the quality of the limited number of female candidates for faculty positions. It is also clear that qualified and interested female candidates are not equitably distributed among the disciplines. Many departments have been relatively successful in their efforts to attract qualified candidates. They have not been as successful in retention as several of the probationers have opted to go to other institutions. In most instances, this decision appears to reflect a desire to relocate in a more urban environment. Other disciplines have been less successful in attracting women applicants who meet the requirements of the Professional Standards committee. The College does not accept the view of some affirmative action enthusiasts who argue that past discrimination warrants the hiring of minimally qualified candidates. While the College does not have tenure quotas, it is obvious to any candidate, that tenure requirements are rigorous and that the opportunity for grants of tenure is limited. None of the foregoing is designed to obscure the College's perception that it is imperative to increase the number of women on the faculty of the College. Forty-seven candidates were interviewed for 13 full-time and two part-time positions during the present academic year. Thirteen of the candidates were women and three women were hired to full-time positions and women were employed for both of the part-time vacancies. One woman was offered a full-time appointment and declined the offer. Another declined a one term appointment.

An analysis of the financial dimensions of the offers does not indicate any discrepancy between the offers made to men and women. It is the practice of Franklin and Marshall periodically to review faculty salaries for inequities, and the Office of the Dean of the College has the resources to adjust any inequities detected and they are resolved without regard to race, sex or any other factor. Compensation does not appear to be a factor in either recruiting or offers to candidates. Some departments have been more successful than others in developing able candidates and in the future departments must be encouraged and perhaps assisted in their efforts to develop well qualified women applicants. However, given the experience of the past few years, it appears that the College will grant tenure to approximately 20 candidates in the next decade. Seventeen of the present 137 faculty positions are terminal or temporary in nature. It is possible that the terminal or temporary proportion of the faculty will increase. It is also possible that the size of the faculty will be decreased in that time interval. All of these related elements combine to suggest that the number of faculty eligible for tenure will, in the immediate future, be relatively modest and as a result of that reality the opportunity to radically increase the number and proportion of women on the fulltime faculty will be severely limited. The temporary and terminal appointments do afford one way to increase the number of women on campus. It is clear that the number of women appointed to tenure track positions needs to be increased and it would appear that the most likely way to accomplish that result would be to develop larger numbers of qualified women candidates. That problem will be a continuing concern for all connected with the recruitment hiring, promotion and tenuring of faculty.

Governance Decision-Making

Female faculty members have served as department chairmen, members of the Professional Standards Committee, and on the College Senate and other committees associated with the governance of the College.

The College has introduced women to the Board of Trustees and two women now serve on the 12 member Overseers or Executive Committee of the Board. Women have been members of the Board of Visitors since its inception in 1971 and women students and graduates serve on the Executive Council of the Alumni Association.

Conclusion

In summary, Franklin and Marshall believes it has made substantial progress in its stated purpose of becoming a truly coeducational institution. It is the institutional perception that the progress to date, while significant, does not reflect a total transition from an all male institution to a coeducational college, and that it is important for the College to continue its efforts to increase the proportion of women in the student body, the faculty and other employees of the College. Attention must also be given to the need to attract able females to the governing board of the College and its related outside agencies such as the Board of Visitors and the Alumni Association. However the realities of the stable state, real financial stringencies, and the modest, but real reduction, in the size of the student body as well as in the number of college employees surely intrudes a substantial complication. The issue is not one of objective, goals or philosophy, but the practical considerations dwealt on at some length and detail in this analysis. Those realities will inhibit the rate of progress desired by the College, but the financial realities and other limitations cited above must not serve to provide an unconscious rationale for the status quo.

The responsibility to see that substantial progress is made towards the self-determined objectives of the College rests with the Executive Officers of the College and those who serve on the key collegial bodies responsible for the areas sensitive to Title IX considerations.

Women's athletics has been a subject of particular interest with respect to the requirements of Title IX and for that reason the following commentary is to be included in the required evaluation.

The studies and recommendations which preceeded the decision of the College to become a coeducational institution erroneously assumed that little or no modifications of either the program or the facilities of the Department of Athletics and Physical Education would be required. The rationale was simply that the interest of women in athletic activity would be minimal and for that reason no significant change in the operation and program of the Department would be required.

The College did employ a full time female member of the Department in the Fall of 1969, but the major part of her responsibility was to provide instruction for the College's required course in physical education. A locker room was converted to a women's locker room and an office was constructed to accommodate the female staff member. She resigned at the end of the academic year to accept a position at Princeton University.

The College eliminated all physical education requirements effective in the Fall of 1970. The nine members of the Department became essentially coaches though voluntary non-credit courses were offered, but these were generally ignored by women with the exception of a course in self-defense taught by a male member of the Department and a course in modern dance taught by a part-time woman instructor.

The Department also underwent major modifications and the name was changed to that of the Department of Athletics and Recreation. Staff and budget were allocated to support a program of intercollegiate athletics, an expanded intra-mural program, informal instruction in carry-over sports, club sports and other athletic related recreational activity.

A new Director of Athletics was employed. A qualified female was employed on a part-time basis to respond to the interest of a small, but committed segment of the female student body in field hockey, swimming, tennis and gymnastics.

The part-time female became a full time member of the Department the following year. The female portion of the athletic program has progressed thru informal clubs and into varsity status for the following sports. (Field hockey, Basketball, Tennis, Swimming, Volleyball and Squash). Lacrosse has been approved for varsity status for the academic year 1976-77. The increase in inter-collegiate activity has been accompanied by the development of both female and mixed club teams in other areas such as badminton, sailing, gymnastics and track and field.

Coaching support is provided by the existing full time male staff as well as the full time female member and a number of part-time or adjunct coaches. The use of adjunct coaches is a long established policy of the College.

The College is a member of both A.I.A.W. and the E.A.I.A.W. and was an active participant in 1974 in the organization of the Pen-Mar Conference, a group of nine private colleges organized for purposes of women's inter-collegiate athletic competition on a regional basis. The women's athletic teams also participate in competition with many members of the Middle Atlantic Conference which is the conference in which most of Franklin and Marshall male varsity teams compete.

Franklin and Marshall is distressed and perplexed with the existing controversy between the A.I.A.W. and the N.C.A.A. and other manifestations of that controversy as it relates to M.A.C. Its Director of Athletics, Dr. William Marshall, has aggressively espoused the interests of women at the N.C.A.A., E.C.A.C. as well as within the M.A.C.

With respect to varsity athletics, the College had 12 male varsity teams when the institution decided to become a coeducational college. The institution now has 18 varsity teams, seven of which are exclusively female. Interest and participation by women in the intra-mural and recreation programs has also dramatically increased. Additional locker facilities have been developed for women and the College converted an indoor pit area into an auxiliary gumnasium so as to provide additional facilities for all students. These additions to the program have been accomplished with little or no increase in the real dollars allocated to the operating budget of the Department.

While the Department is now treated as an administrative department, four of its nine present members hold faculty status and are tenured. Assignments within the department are based on aptitude or skill, not sex. For example, the tenured male swimming coach also coaches women's swimming and that program has been largely integrated through the device of dual meets which feature both male and female student athletes. It has been the experience of the College that part-time coaches with technical ability and a commitment to the principles of the athletic program of the College are appropriate. Part-time coaches have historically directed such male sports as soccer, baseball and assisted in football. Therefore the College believes it has been fortunate, largely through the process of trial and error, in identifying able women coaches who are willing to undertake part-time coaching assignments on a continuing basis and thereby provide continuity to those women's varsity programs with which they are affiliated.

A quantitative comparison between the College resources, staff, and facilities is not a productive or a very revealing approach to the ultimate role of women's athletics and related activity at the College. The interest of the women students to date is considerably in excess of that anticipated at the time the College adopted the coeducational report. There are very positive indications that women's athletic and recreation are undergoing geometric growth at the secondary school level and that development seems likely to impact on post secondary institutions.

Yet, the experience of 1975-76 at Franklin and Marshall clearly indicated that the competitive nature of several of the varsity programs had outgrown in at least the majority of instances the numbers of women prepared for, and desiring that level of competition. It therefore seems appropriate for the short term future to consolidate and evaluate the rapid strides of recent years and seek to strengthen existing female varsity programs, not to expand into additional varsity activity at this time. It is possible unless there is a more sustained interest in some areas, that varsity status will be abandoned or perhaps more probable, some reduction in the length of schedules may be indicated.

The areas of intra-murals and recreation must undergo further development. It is possible that some of the existing female interest would be more appropriately accommodated by intra-mural or purely recreational activity. Given the nature of Athletic Departments, there is a well-established tendency to regard varsity activity as the major facet of a department's program. This emphasis, which is misplaced in the opinion of the executive officers of Franklin and Marshall, is however not peculiar to the College's department and indeed the requirements of Title IX do little to assist an institution in dealing with the Athletic establishment including both the male and female activists in those respective groupings.

Franklin and Marshall specifically rejects the notion that Title IX requires a separate and equally staffed and funded department of athletics for women. It is our view we have one department, one overall program, and that the department and its program must be flexible and adapt to the ever changing needs and interests of the institution's students. Our department as structured and funded is not as flexible as might be ideal, but there is demonstrable commitment on the part of the Director and the staff, as well as the College to meet the increasing interests of young women. There is perhaps an understandable tendency to duplicate, or use as a model, existing male varsity programs and it may be doubted whether that approach is equally productive in all instances. However, it is clear that few collegiate institutions have had enough experience with student athletes who are women to make commitments which will limit their future flexibility.

In short, the present situation is demonstrably not susceptible of automatic extrapolation into the future. Turnover within the full time staff will develop opportunities to increase the female segment, but Franklin and Marshall is by no means convinced that a full time staff of nine affords the diversity of skill and experience desirable for approximately 2000 students. It is possible that the departure of a full time male member of the staff would afford an opportunity for programtic adjustments which could be accommodated best by additional part-time personnel of both sexes with specific coaching assignments.

The future of inter-collegiate athletics at institutions such as Franklin and Marshall is itself uncertain. The high costs of such programs and the real and apparently permanent financial pressures have led some to conclude that inter-collegiate varsity athletics will have to cut back, some say eliminated, within the foreseeable future. Franklin and Marshall does not subscribe to that point of view at this time, but it has been made clear to the Department that no significant increase in either dollars or physical resources may be anticipated. Under these circumstances, the institution believes it will meet its commitment to all students by providing adequate facilities, coaching and other staff support and appropriate budget for each sport without regard to the sex of the participants.

The immediate challenge facing the department is to devise and maintain programs equal to the interest and aptitude of women students. As suggested, some adjustments do now appear necessary to bring the programs into balance with the existing interest and skill of women student athletes and it is clear that adjustments will continue to be necessary on a year to year basis.

APPENDIX C

TO ALL EMPLOYEES OF FRANKLIN AND MARSHALL COLLEGE

STATEMENT OF POLICY

It is the policy of Franklin and Marshall College to offer equal employment opportunities to all qualified employees and applicants, regardless of race, religion, color, national origin or sex. There will be no intentional discrimination in violation of the provisions of Title VII of the Civil Rights Act.

We wish to emphasize it is the Company's fundamental policy to provide equal opportunity in all areas of employment practice. This policy extends to hiring, working conditions, employee treatment, training programs, promotions, and all other terms and conditions of employment. All employees should feel free to exercise their rights under this policy.

The Company condemns and will not tolerate any conduct calculated to intimidate, retaliate, harass or otherwise discriminate against any employee because he or she has opposed any practice made an unlawful practice under the Civil Rights Act or has filed, charged, testified, assisted or participated in any manner in any Civil Rights Act investigation, proceeding, hearing or lawsuit.

APPENDIX D

INSTITUTIONAL PROCEDURES RELATING TO THE FAMILY EDUCATION RIGHTS AND PRIVACY ACT OF 1974

The Family Education Rights and Privacy Act of 1974 as amended (commonly referred to as the Buckley Amendment) is supportive of previously adopted policy of Franklin and Marshall College concerning the rights of students to the confidentiality of their educational records and to the rights of students to have access to such records. However, the Act makes certain rights and procedures explicit and requires that the College establish certain procedures to ensure that the purpose of the Act is achieved. A copy of the Act and the regulations issued thereunder are available at the reserve desk of the library.

The major features of the Act are: the identification of "educational records" of students, the right of student access to such records, the opportunity of students to correct or amend these records when warranted, and the privacy of the records. The following paragraphs establish the procedures used at Franklin and Marshall College for the implementation of the Act.

A. Definition of Educational Records

1. Educational Records. Educational Records are defined by the Act as those records, files, documents, and other materials which contain information directly related to a student and which are maintained by the College or an agent of the College. These are:
   a. Admissions folders and materials held in the Admissions Office until transferred to the Office of the Registrar.
   b. Academic records, grade reports, transcripts of grades, major slips and such other information as may appear on the College transcript held in the Office of the Registrar.
   c. Records and documents related to the decisions of the Committee on Academic Status and the Committee on Student Conduct, and general information regarding the student's curricular and extra-curricular performance and activities, held in the Office of the Associate Dean, Students Affairs.
   d. Records held by the student's academic adviser.
   e. Records and documents held in the Financial Aid office;
   f. Records and documents relating to the decisions of the Committee on the Pre-Healing Arts.
   g. Records and documents relating to the decisions of the Pre-Law Committee.
   h. Records of the Placement Office.

B. Privacy of Student Educational Records

1. Release of Student Educational Records: No educational record shall be released by the College or its agents nor shall access be granted thereto without the consent of the student except as hereinafter provided in Paragraph 2. Student requests for the release of information may be made by filing the forms provided for the purpose with the officer of the College holding such educational record(s).
2. Exceptions to Release Only at Student Request. The Act provides for exceptions to the necessity of the College obtaining a student's consent before releasing or permitting access to that student's records. The following persons and organizations may have such access, subject to the limits stated in each case:
   a. Other Franklin and Marshall College officials.
   b. Authorized representatives of government who need the information to audit, oversee or administer the Act. Federally supported education programs, or financial obligations of the College or the student.

c. Organizations conducting studies concerning the validity of predictive tests, administering student aid programs, or improving instruction, if such studies are conducted in such a manner that specific students cannot be identified in the publication of the results and provided such information will be destroyed when it is no longer needed for the purpose for which the study was made.
d. Accrediting organizations for the performance of their accrediting function.
e. Parents of a dependent student of such parents.
f. Such information as may be required by judicial order, or any lawfully issued subpoena, will be released on condition that the student is notified prior to release of the information and on condition that the College will not suffer legal liability.
g. In the event of a health or safety emergency, information may be released to appropriate persons without the consent of the student if such information is necessary to protect the health or safety of the student or of other persons.

3. Directory Information: Neither the Act nor these regulations preclude the publication by the College of directory information providing the student has not withdrawn consent to the publication of such information on forms made available to the student at the time of admission to the College or at the time of registration. This directory information includes and is limited to the following:
   a. Name, home address, home phone number, local address, local phone number, name and address of secondary school attended, periods of enrollment and degrees awarded, field of concentration, date of graduation, date and place of birth, confirmation of signature, and membership in college organizations.
   b. Such information as is included on programs prepared for athletic contests;
   c. Announcement of the granting of honors or awards.

C. Access to Educational Records

Subject to the procedures and the exceptions contained below, students have a right of access to the records described in Section A above, a right to challenge the accuracy of these records and to have explanations or comments on these records placed in their file. They also have a right to have copies of their records with a payment of fifteen cents per page to cover the cost of duplication.

1. The Act contains exceptions to the general right of students to access to files and documents. These exceptions are:
   a. Confidential statements and letters placed in the files prior to January 1, 1975, and confined in their use to the purposes for which they were intended;
   b. Confidential letters and statements as to which students have waived a right of access;
   c. Notes, statements, records, documents or other papers which are kept in the sole possession of the maker thereof and are not accessible to others (such as private notes made by professors, academic advisers or administrators that are purely personal reminders of an event or fact that they may or may not use in a subsequent decision such as determining a grade in a course, advising as to courses, etc.);
   d. Records and documents of the campus security office;
   e. Records created and maintained by the Health Services which are used in connection with the treatment of the student;
   f. Confidential financial records of students' parents.
2. Waiver of access. A student may waive a right of access to confidential statements and letters submitted as part of his or her admissions dossier but this waiver does not apply if the letters or statements are used for purposes other than to make a judgment about the admission of the student to Franklin and Marshall College. Students may also waive a right of access to confidential recommendations respecting admission to another college or university, a graduate school or a professional school. Authors of such letters will give the student an opportunity to waive a right of access to such letters of recommendation as they may write.

Students may also waive a right of access to confidential recommendations concerning application for emloyment or receipt of an honor or honorary recognition.

3. Access Procedure. Students who wish to review certain of their records may do so by submitting an applicaton to the pertinent officer of the College on a form provided for the purpose which shall identify what part of the educational records the student wishes to review. Within 45 days of the submission of the application, the College officer responsible for maintaining those records will meet with the student and present to the student the records and documents to which the student is entitled and will provide such explanations or comments as the student may require for clarification. If the student should challenge any part of the folder, file, document or record, the Dean of the College or his designee shall try to resolve the matter by such informal means as discussion and/or deletion of erroneous material, addition to the record of an explanatory statement or such other remedy as is deemed appropriate in the judgment of the Dean or his designee and the student.

   If the challenge to the content of the record cannot be resolved by such informal means, a hearing shall be held within a reasonable time to resolve the matter and the decision of the hearing panel will be final. The hearing panel (all three members of which are to be drawn from the College community) will be made up of a member chosen by the student, a member chosen by the Dean and a member chosen by the Dean's representative and the student's representative.

   The decision of the hearing panel will be rendered within ten days of the hearing, will be in writing and will be delivered to the student and the Dean.

4. Record of Access. Those officers under whose care the records are kept shall keep a log of the names (and dates) of those who have requested or have had access to the student's record, and the legitimate interest that each person has in obtaining this information.

5. Limited Scope and Purpose of Student Review of Records. It is not the intention of the Act or these procedures to provide a forum for challenging course grades, the decisions of the Committee on Academic Status, the Committee on Student Conduct or any other committee or officer of the College assigned the responsibility to make judgments. Rather, it is the intention of the Act and these procedures to make known to students the informational base upon which decisions included in the educational records are made and to allow corrections of that information or inclusion of explanatory statements.

D. Administration of Policy and Procedures

The Dean of the College shall have general oversight of the administration of the Act and the above regulations. Questions concerning the matters covered by these regulations and the Act should be directed to the Dean of the College in such form as may be required.

Recommendations for changes and amendments to these regulations will be welcomed by the Dean and such changes as experience demonstrates should be made will be made in a manner and at such times as conform to Franklin and Marshall College procedures.

APPENDIX E

AFFIRMATIVE ACTION PROGRAM

I. Equal Employment Opportunity Policy Statement

Equal employment opportunity is a subject which has received considerable public attention in recent years. Franklin and Marshall College, therefore, deems it appropriate to restate its basic policy on equal employment opportunity

It is the policy of Franklin and Marshall College to offer equal employment opportunities to all qualified employees and applicants, regardless of race, religion, color, national origin or sex. There will be no intentional discrimination in violation of the provisions of Title VII of the Civil Rights Act.

This policy is in accord with the Federal, state and local laws. It is a reaffirmation of the College's continuing commitment to provide equal opportunity to all employees and applicants for employment with respect to their selection, terms and conditions of employment, assignments, training, transfers, advancement and compensation.

II. Dissemination of Policy

This policy will be communicated both internally and externally by:

1. A copy of the "Statement of Policy" as adopted by the Board of Trustees of the College on ________________, 1974 will be posted on bulletin boards and distributed annually to all personnel involved in the College's hiring process.

2. All recruitment procedures which the College pursues will include a positive statement pursuant to the "Statement of Policy" that qualified candidates are considered without regard to sex, race, religion or national origin.

III. Responsibility for Implementing Policy

The Vice President, Administrative Services, has the overall responsibility for insuring that the College's "Statement of Policy" is carried out as described in the Affirmative Action Program. He will review the Affirmative Action Program periodically to insure its completeness and effectiveness. He will enlist the cooperation and active support of all the officers and employees of the College. Officers and department heads are responsible for the implementation of this plan within their areas of functional responsibility.

IV. Recruitment

All recruitment procedures which the College pursues will include a positive statement pursuant to the "Statement of Policy" that the College is receptive to qualified applicants of any sex, color, race, religion or national origin. It is the understanding that while word of mouth recruitment may be utilized in recruiting candidates for a given vacancy, it will not always be used as a preferred recruitment device. Word of mouth recruitment shall mean a procedure where employees of the College are encouraged to recruit candidates for an opening from their immediate circle of friends and relations.

Any advertisement that the College places in the recruitment of candidates for any vacancy will contain the phrase "Equal Opportunity Employer".

The College will not place help-wanted advertisements in newspapers, magazines, trade publications or any other media which indicate a preference, limitation, specification or discrimination by the College on the basis of race, color, religion, national origin or sex (unless sex is a bona fide occupational qualification for the particular job involved).

V. Transfer and Promotion

The qualifications of all employees will be continually reviewed and evaluated without regard to race, color, religion, national origin or sex (except where sex is a bona fide occupational qualification).

The College as a preferred practice will bring to the attention of the employees of the College available job vacancies, and the duties and qualifications for which existing employees may qualify for such jobs prior to notification to and the utilization of other recruitment sources.

VI. Facilities

Whenever employees of the College are entitled to use any of the facilities on the premises, the availability of such use shall be without regard to race, color, religion, or national origin and there shall be no discrimination against any employee on such grounds with respect to the use of facilities whenever employees are entitled to use any of the facilities.

VII. Hiring Process

All job applicants shall continue to be invited to file an application for employment.

Unsolicited applications received at times when positions are not available will be retained in accordance with regular past practice. Unsolicited applications will be used as an affirmative action tool to increase the minority group applicant or female applicant flow for later job openings within two years for which such applicants may be seriously considered with other applicants for a position in accordance with the applicant's experience and qualifications background. The use of these minority group or female applications in this respect does not imply the exclusion of consideration of other applicants.

Applications which are reviewed in response to existing job openings shall be promptly reviewed, and will be either accepted, rejected or held pending further evidence of experience and qualifications background. Unsuccessful applicants shall be so informed. Efforts will be made to determine if another position is available for which the applicant may be seriously considered with other applicants in accordance with the applicant's experience and qualifications background.

VIII. Reporting

Reports shall be prepared periodically to measure the effectiveness of this Affirmative Action Program. The reports shall be reviewed by the person who has overall responsibility to insure the completeness and effectiveness of this program.

IX. Goals

Periodically, the employment situation at the College shall be reviewed by the person who has overall responsibility to insure the completeness and effectiveness of this program to determine any areas in which greater emphasis is desirable to achieve demonstrative equal employment opportunity distributions within the framework of employment opportunities which become available in these areas.

X. General

It is the continuing responsibility of all administrative and supervisory personnel to provide equal employment opportunity for all employees with regard to work assignments, training, transfers, advancements, and other conditions and privileges of employment. These responsibilities include but are not limited to the following:

1. Assisting in the identification of areas in need of improvement and establishment of objectives and overall goals to implement this program.

2. Periodic review of hiring and promotion patterns to insure meaningful attempts to meet objectives.

3. Periodic discussions with department heads, supervisory personnel and employees to be certain that College policies were being followed.

4. Providing guidance to employees to help them adjust to their work surroundings in order that they are able to fulfill their work potential.

APPENDIX F

ON POSTPONING RETIREMENT

Richard F. Schier

On July 14 the Committee on Education and Labor of the House of Representatives, by unanimous vote, sent to the House floor a bill (H.R. 5383) to prohibit mandatory retirement before age 70 in the private sector and for state and local employees, and to remove the present mandatory age of 70 for Federal employees.

The Committee's action came as a surprise to many people. Both public policy and private sentiment seemed, in fact, to be moving in the other direction. The Social Security Act of 1935 had set 65 as a "normal" retirement age, and this has subsequently been reduced (with lower benefits) to 62. And recent statistics have demonstrated that growing numbers of workers were retiring even earlier while a lower retirement age has increasingly been the object of union contracts.

Neither can it be said that the Committee's action followed upon extensive public discussion. If this matter occupied the attention of either of the presidential candidates last year, it escaped this citizen's attention. Most of the business community strongly opposed the bill; most of organized labor opposed it less strenuously. The reaction to the Committee vote by the groups likely to be affected has been hesitant and uncertain. The proposal has been championed principally by the senior citizens lobby, together with some civil libertarians. Given the sympathy that senior citizens rightly enjoy, those with reservations about the new policy seem resigned to the notion that this is another bad (or dubious) idea whose time has come.

But it is an important change. Of that there can be no doubt. Its sponsors see it as the first step in the elimination altogether of any consideration of age in seeking to compel retirement.

It is not my objective here to discuss all of the merits and demerits of H.R. 5383. Since the Committee's action many of the pros and cons have begun to be explored in the public forum. My purpose is to call attention to a neglected aspect of the debate which should properly be considered before the full Congress acts. It is testimony to the extent to which the general public was unprepared for this proposal that so important an aspect of it has gone unexamined.

Perhaps the most general and persuasive defense of a compulsory retirement age is that it removes any stigma that might be attached to severance from employment. Employers are thus spared the necessity of making specific decisions in individual cases, and retirees are spared the pain of invidious distinctions. This is surely not a negligible consideration.

When this objection to H.R. 5383 was put to Congressman Claude Pepper, its chief congressional sponsor, his reply was that this problem was soluble by "competent, compassionate personnel managers." Mr. Pepper is apparently unaware that his proposal would apply to large numbers of employees in fields where the presence of personnel managers, compassionate or otherwise, is unknown.

For these people, principally teachers with academic tenure and government employees with civil service status, involuntary severance from employment can be accomplished only by a highly elaborate and costly procedure leading to a formal finding of incompetence, or worse. Yet H.R. 5383 specifies that workers over 65 may be retired only by the same "methods of releasing employees incapable or unwilling to perform satisfactorily [used] during the first 45 years of their work lives."

Congressman Pepper may be pardoned for overlooking the teaching profession, but for one with his years in Washington to be ignorant of the personnel practices of government bureaucracies is an egregious blunder. In our society there are now millions of employees who possess something akin to a property right in their jobs from which they can be separated, not by personnel administrators, but by something approaching due process of law.

To be blunt about it, it is all but impossible to dismiss tenured teachers or civil servants, even when commonly deemed incompetent. Up till now, in both areas, employers have consoled themselves that a mandatory retirement age will, in the fullness of time, afford a solution. H.R. 5383 would postpone this solution indefinitely in the Federal civil service and for five years virtually everywhere else.

Moreover, these are areas of much too much importance to be simply ignored by those who press for the postponement of retirement. A geriatric bureaucracy can hardly be an attractive prospect for a President Carter bent on reforming and improving the Federal government. The senior citizens lobby is fond of citing the case of Arthur Rubinstein, who was not a civil servant, giving a performance on his 90th birthday. Understandably it has much less to say about the performance of the septuagenarian J. Edgar Hoover, who was a civil servant.

In academe the situation is no better. Population trends of recent years and for the foreseeable future already have severely restricted access of younger people into the teaching profession. In the "steady state" which is now characteristic of colleges and universities, together with declining enrollments at the elementary and secondary levels, virtually the only new openings for employment are brought about by retirements. Aspiring teachers in their late twenties are no less of a minority than established teachers in their late sixties. Public policy can properly concern itself with both groups.

In discussing this matter, it is necessary to say some things that are unpleasant. Failing powers are not the inevitable accompaniment of age, but they are a not infrequent accompaniment. Congressman Pepper apparently believes that competent personnel administrators can determine when competence has departed, but in the categories that concern me his solution is simply not applicable.

If H.R. 5383 were to pass in its present form, what should be done? One possibility, of course, is to relieve teachers and civil servants of the protection they now enjoy, thereby enabling the personnel managers to go about their work. Academic tenure has long been subject to criticism and even the civil service system no longer commands the unquestioning support it once did. Still, these are extreme remedies and the vested interests which oppose them are formidable and are not likely to be weakened by the passage of H.R. 5383.

We seem likely then to continue as before, at least in the near term, adjusting as best we can to the new rules. How great an adjustment will be required will depend largely on how many employees will avail themselves of the extended employment eligibility.

Curiously, although no one knows for sure, there seems general agreement that the number will not be large. Most people, it is assumed, will continue to retire at less than the maximum permissible age. This may be especially true of teachers and civil servants, occupations where pension benefits are generally adequate, perhaps even generous.

The principal impact then will be dependent upon the kinds rather than the numbers of persons who will find continued employment attractive. Supporters of H.R. 5383 believe that the extended employment option will be attractive to those who retain their vigor and capacities virtually unimpaired.

But it is possible that the greater attraction will be to those who cherish the familiar and routine. For them the personal dislocation that accompanies retirement may be a frightening prospect indeed, even when it is achieved with economic security.

Let us hope, but let us not be confident, that the sponsors of H.R. 5383 are right and that the new policy will improve the quality of both education and government service.

But let us be conscious also that if they are wrong the real victims will not be so much government service or education but those whom H.R. 5383 was intended to benefit. A mandatory age requirement seeks to remove the stigma from retirement. What could be crueler than bringing what may have been a distinguished and dedicated career in government or teaching to a close with a formal finding by a duly constituted committee that the author of that career is now incompetent? Under present practice there is no other way.